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ABSTRACT

Dedicated to discussing the Bill of Rights of the U.S. Constitution, this conference report presents the texts of six speeches. The presentations include: "Return to First Principles: The Philosophical and Historical Roots of the Bill of Rights" (A. E. Dick Howard); "How Do We Deal with First Principles?" (Herbert Atherton); "History, Philosophy, and Contemporary Issues of the Bill of Rights" (John Patrick, Jean Otto, Charles Haynes); "Contemporary First Amendment Issues" (Os Guinness); "Educating for Our Common Compact" (R. Freeman Butts); and "Lasting Values: A Catalyst for Global Change" (an edited version of Rita Klimova's speech, and comments by reactors Julia Klimova and Andy Smith). (DB)

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10th Annual

JENNINGS RANDOLPH FORUM
FOR THE ADVANCEMENT OF CITIZENSHIP

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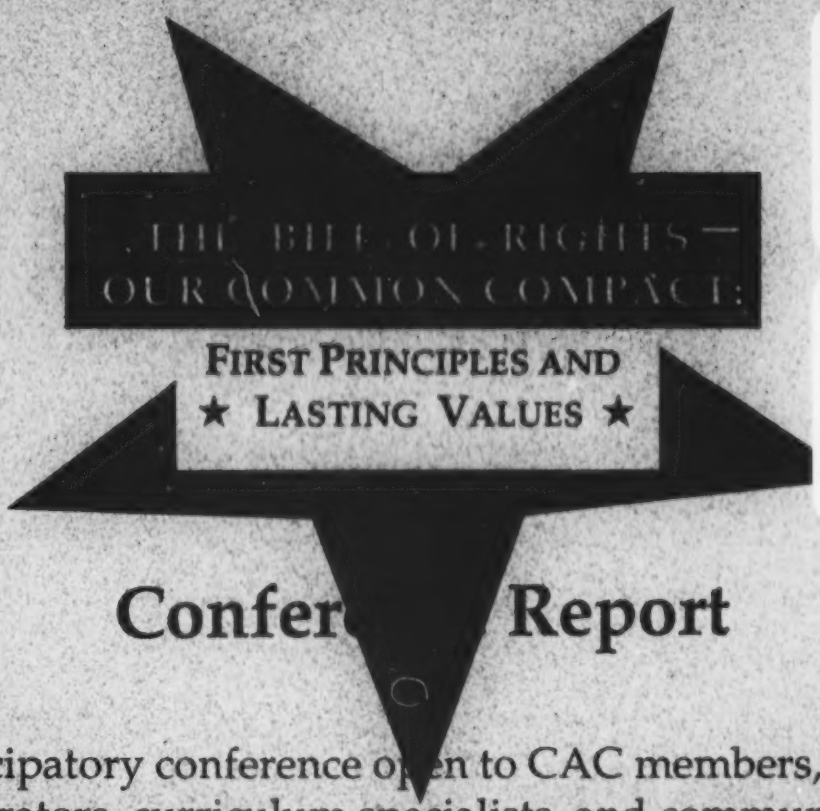

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Conference Report

A participatory conference open to CAC members, teachers, adminstrators, curriculum specialists, and community leaders.

May 1-3, 1991
National 4-H Center
7100 Connecticut Avenue
Chevy Chase, MD

SO 020 047

CAC
Council for the Advancement of Citizenship

About Senator Jennings Randolph (ret.)

Jennings Randolph of West Virginia was elected to the U.S. House of Representatives in 1932 and served through 1946. In 1958, he was elected to the U.S. Senate, in which he served through 1984. Among his many achievements is authorship of the 26th Amendment to the Constitution, which lowered the voting age from 21 to 18. Senator Randolph founded the Council for the Advancement of Citizenship in 1981.

About the Jennings Randolph Forum for the Advancement of Citizenship

Each Spring, the Council for the Advancement of Citizenship (CAC) convenes the Jennings Randolph Forum for the Advancement of Citizenship in Washington, D.C. Traditionally, the Forum has addressed a critical national issue as it relates to citizenship education. National leaders and participants from all sectors meet for two days to examine and discuss important issues which impact the field of civic education. Through collaboration and educational exchange, Forum participants gain insights and direction for creating, teaching, and adminstering programs that effectively prepare students of all ages for the "office of citizen" in a democratic society.

Previous Forums have combined scholarly research with lively dialogue on such topics as immigration and citizenship education; new technologies and citizenship education; national and community service; the First Amendment and citizenship education; educating for peace, and effective citizenship in our increasingly interdependent world, and the urgency of education for citizenship. Published Forum proceedings serve as a resource and discussion guide for civic educators and community leaders to continue, in their own communities, the dialogue begun in Washington, D.C.

CAC's Tenth Annual Jennings Randolph Forum for the Advancement of Citizenship is made possible by grants and in-kind contributions from the Claude Worthington Benedum Foundation, the Close Up Foundation, the Kettering Foundation, the National 4-H Council, the Peace Child Foundation, The Pew Charitable Trusts, and the United States Institute of Peace. CAC is especially grateful for this support.

Conference Report

The Council for the Advancement of Citizenship

The 10th Annual Jennings Randolph Forum For the Advancement of Citizenship

The Bill of Rights — Our Common Compact: First Principles and Lasting Values

May 1–3, 1991
National 4-H Center
7100 Connecticut Avenue
Chevy Chase, MD

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CAC extends its appreciation to K. Russell Weathers, formerly Vice President of National 4-H Council and new National Executive Director and Chief Executive Officer, Camp Fire, Inc., for serving as Chair, Jennings Randolph Forum, from August 1990 to December 1990.

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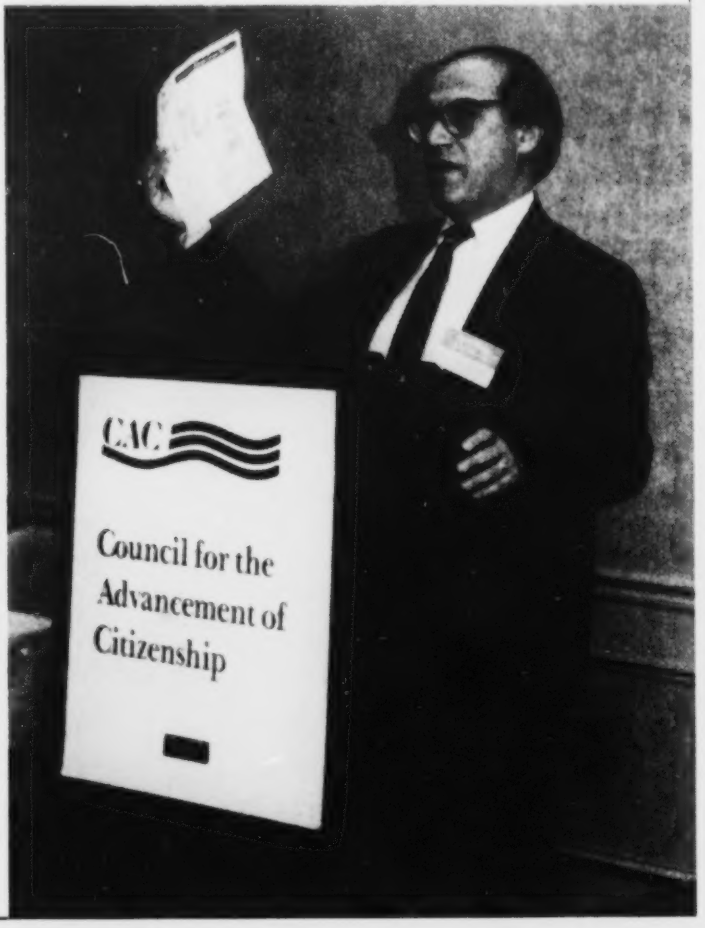
Preface

During the Bicentennial of the Bill of Rights, events foreign and domestic remind us of the great document of liberty contained within those ten amendments. As other nations overthrow their tyrants, they turn to the United States for the constitutional model of how to define and protect the rights of a citizenry. Here at home, two Supreme Court vacancies have renewed the philosophical debate over the meaning of those words set down 200 years ago. It was altogether fitting that the focus of this year's Jennings Randolph Forum was "The Bill of Rights — Our Common Compact: First Principles and Lasting Values."

Through the Jennings Randolph Forum, the Council for the Advancement of Citizenship has made a significant contribution to civic thought in this country. Privileged to have attended every Forum since its inception, I believe that 1991 was our best year ever. Simply listing some of the speakers is sufficient evidence — A.E. Dick Howard, Herbert M. Atherton, Os Guinness, R. Freeman Butts, and Ambassador Rita Klimova. From the general sessions to the workshops, I was repeatedly struck by the quality of the presentations and the depth of the discussions.

I'd like to thank everyone who joined together to make the program such a success, beginning with my fellow committee members. The CAC staff is to be saluted for their tireless labors to fit all of the pieces, great and small, together. I owe a particular debt to John Buchanan, President of CAC, for his support and inspiration. Thank you to all of the speakers, and thank you to all those who attended. I'm most grateful for and appreciative of the excellent facility provided by the National 4-H Center, and for the Kettering Foundation's special contribution. The strength of the Forum is the interaction of the participants, which is why I'm already looking forward to the year ahead.



Charles M. Tampio
Chair 1990–91
Jennings Randolph Forum
Committee

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Introduction

The 10th Annual Jennings Randolph Forum lived up to its name. As we paid tribute to our Founder and to the lengthening shadow of this unique American statesman, the Council for the Advancement of Citizenship celebrated in the most appropriate way, through scholarly reflection on the first principles and lasting values embodied in our common compact, the Bill of Rights. Our distinguished speakers led us well, and we were all enriched by the experience.

Yet even as we celebrate the Bicentennial of the Constitution and the Bill of Rights, and even as a world in ferment looks to us as the great role model of freedom, democracy and the sure protection of the inalienable rights of human kind, Americans seem uniquely disenchanted with our own great experiment in liberty under law. Jennings Randolph worked for thirty years to secure the passage of the Constitutional amendment providing the vote to eighteen-year-old citizens. The overwhelming majority of Americans 18–24 do not vote and simply are not interested in the political system that is their heritage. Nor do their elders set a very good example. Only about half of the American people voted in the last Presidential election, and educational testing reveals Americans' shocking ignorance of the content of the Constitution and the Bill of Rights.

Mr. Jefferson remains right in the confidence that an informed and involved citizenry is essential to the strength and even the survival of a democratic society. As the whole is equal to the sum of its parts, a nation is equal to the sum of its people. For our country's sake and for our children's sake, we must not let ourselves become a generation of Americans who know little and care less. The United States is not only a melting pot, but also a rich mosaic of the world's peoples and cultures and faiths, a diversity which has strengthened and enriched the life of our nation throughout history. Yet as rich new strains enter the lifestream of our society here and now, and as increased pluralism and diversity of cultures impact the nation with new force, we seem to have entered an era in which old hostilities are revived and new conflicts and confusions proliferate. It is a time to rediscover our common compact and to work toward the achievement of E Pluribus Unum.

Like the Berlin Wall, the repressive regimes of the Communist world are crumbling before our very eyes. In Central and Eastern Europe, in the Soviet Union, in Latin America, in Southern Africa, and yes, even in China, the new wave of freedom is becoming a mighty tide. Perhaps there has never been a more exciting time to be alive. Yet will it be said of us here in America that we are the classic Rip Van Winkles of human history, a people grown fat and lazy, tired of responsibility, bored with freedom, who have fallen asleep while the revolution proceeds all over the world? As we sleep in front of our television sets, we endanger here the very freedoms for which the world strives and for which mankind hungers—freedoms which have been for us and can yet continue to be for our children a rich and goodly heritage.

Hon. John H. Buchanan
CAC Executive Director

Return to First Principles: The Philosophical and Historical Roots of the Bill of Rights

The formal proceedings of the Forum began with a keynote address by **A.E. Dick Howard.** The following is an edited version of his remarks.

There must be those of you in the room who, knowing "Jay" Butt's reputation and stature in his field may have wished that Professor Howard was doing the introductions and "Jay" Butts was doing the speaking, but that is not the task I've been assigned tonight.

I was down in Richmond today speaking tothe Richmond Bar Association at their Annual Law Day Luncheon, and in the room were some of my former students and other colleagues in the Virginia Bar. The problem with speaking to former students, of course, is that they know where all the bodies are buried. They've been in your classroom. When they turn up at a public occasions, it chills me a bit.

Here, I think, are no former students. I have old friends that I consider very charitable, like Chuck, Annette, "Jay" and John and others who I think will be there recording the event. It's a special burden to begin an event like this where for the next two or three days you're going to hear from some very remarkable people. In particular, I urge you to attend and reflect on what Rita Kilmova has to say on the last day of the conference.

Now, the Czech and Slovak ambassador to Washington, she's quite a remarkable woman. And on realizing that she would, in effect, conclude the program, it really put me in mind of how I'd like to begin it. Because, in effect, we're sort of bookends. In between is a lot of very serious and thoughtful material. And I'd like to have a certain complete, quality about this conference, and I begin with a thought or two about being in Prague at a working session a few months ago.

I went there at the invitation of the Czech-Slovak government and found myself at the table with the draftsmen of the new Bill of Rights for the Czech and Slovak Federal Republic. A wonderful opportunity. The next best thing to being in Philadelphia in 1787 is to be in Eastern Europe and watch these people, having emerged from decades of socialist darkness, Having been denied the democratic experience now begin to lay the foundations for a constitutional democracy. As we sat around that table, they were the draftsmen. I was simply a sounding board. I was to raise questions and to get them to think about the drafts that they were putting together. Now, when we in this country talk Bill of Rights, we think typically of the federal document—the first ten amendments, drafted largely by James Madison, adopted in 1791. We think of a very sparse, brief rhetorical, practical document—addressing specific and concrete abuses of the time. They are what my late boss, Hugo Black, once called the "Thou shall nots" of the Constitution. What government may not do. What it is not permitted to do. It doesn't enter into the domain of affirmative or positive rights. If you were to read the Bill of Rights of most other countries, you'll very commonly find affirmation of rights in a positive way—the right to a job, to old age benefits, to maternal benefits—things that we in this country deal with largely by legislation rather than a matter of Constitutional right. In short, drafters of Bills of Rights elsewhere commonly produce a document that looks, in many ways, like a political party platform. They dangle all the goodies before the people of a country even if, in fact, it's not likely those expectations can be fulfilled.

Two vignettes from Prague. The drafters of that Bill of Rights wanted a right to life. Well, who could argue with a right to life? And they said, "We want it to be an absolute right." And I said, "What does it mean to be an absolute right?" They said, "We mean a right not only against the state, but against everybody, private as well as public." I said, "Well, gee. That's very intriguing. Does that mean, for example, I'm crossing the street with my child and a car comes along and runs her down and kills her. Does that mean a wrongful death action becomes a Constitutional tort? That there's a constitutional right to go and collect damages, not simply a statutory right?" Well, they hadn't thought about that. Because the phrase "right to life" simply sounded so good, it had the ring of an absolute.

Another vignette came when we were talking about the right to an education, especially appropriate to this particular group. There are some state constitutions that have been interpreted as giving a Constitutional right to some form of education or another. The Supreme Court, at least in theory, has said there is such a right under the 14th Amendment. But the drafters of the Czech and Slovak Bill of Rights wanted the right to education spelled out.

And once again, playing my sort of narrator's role, I said, "What does that mean? What will it do? Does it mean, for example, that one has a right of access to higher education, free of charge, if one can't afford it? Does it require equalization of expenditures between rich and poor school districts (the subject of many lawsuits in this country)? Does it mean Constitutional Rights to due process before one can be suspended or expelled? What does it mean?" You must understand that law as taught in civil law countries is very pedantic, organized, and analytical. Americans in their classrooms teach law through the so-called Socratic method—lots of impossible questions are raised, and students are expected to answer the questions teachers can't answer themselves. The whole point is you may not be smarter than they are, but you've been at the game a little bit longer. You just keep the ball in motion, and they don't realize you're not that smart.

So, I was doing this to my Czech and Slovak friends. I was simply asking these questions. Well, their eyes got big as saucers because basically, I was opening the door to what we in this country call the litigious society. Americans feel that if you feel strongly about something in this country, it must be a right. And not simply a right, but a Constitutional right. Most people in this room are familiar enough with the Supreme Court to know the extraordinarily creative and expansive ways in which the Court, especially in the last 25 or 30 years, has taken a simple phrase like "due process," or "equal protection," and poured enormous volumes of meaning into those deceptively simple words. Out of it come volumes of U.S. reports and countless legal decisions. The idea of rights is so malleable and so infinitely expandable that you walk into your Chrysler dealer, and there's that picture of Lee Iaccoca with the consumer's Bill of Rights. If it's a Bill of Rights, it must be good. It's part of our mythology.

So, what I want to set before you in a few words this evening is a thought or two about how Americans have come to think as they do about rights. It's almost a linguistic analysis. We use the word "rights" when we use the phrase "Bill of Rights." What in the world do we mean by it? Well, one reason it's so difficult to pin down is that, unlike our European friends and counterparts, we in this country have never been very tight or tidy about Constitutional thinking. We're very pragmatic. We absorb lots of disparate trends and thoughts, and we're willing to be eclectic. It's rather like lawyers write briefs in court. If I write a brief before the Supreme Court or some other court, I probably put in a jurisdictional argument or a procedural argument or a statutory argument or a Constitutional argument. I may have a certain intellectual commitment to one of these arguments or another, but my client doesn't care. He wants me to win his case. All he wants is five votes out of nine, and he goes home happy. He doesn't care if it's good law or bad law, he wants that result. That is very American, to care about the outcome. But what does it do in practice? But, I think the fact that our Constitutional law is so many-faceted derives in part from the Founding Fathers. The Americans who wrote the Constitution and the Bill of Rights were people who were perfectly content with drawing on a number of competing traditions. Look sometime at the pamphlets, tracts, and the resolutions that were written during the 1760s and 1770s complaining of British policy. What you typically find is several modes of thinking about rights. One mode drew from the English common law—from the British Constitutional tradition going back to Magna Carta in the 13th century and drawing very heavily upon 17th century English ideas. And these are ideas, except their reinterpretation of principle is very much a common law way of reasoning from one precedent to another and in doing so, changes the idea itself. Well, that's part of our thinking about rights, that rights have an ancient origin, but they become reinterpreted.

In addition, the Framers' time was one which was drawn from the American experience itself. The colonists who came to this country under charters—proprietary, royal, or otherwise, such as the 1606 charter, the Virginia Company—

were guaranteed that each would enjoy all of the privileges, franchises and immunities they would have enjoyed had they stayed in England. And so Americans became used to the notion that they could establish certain rights or principles. And they had a century-and-a-half of working out what they thought these rights meant. A century-and-a-half between the first foundings and the point at which the British tried to re-establish serious control over the colonies. By the time of the Stamp Act, and the Boston Port Bill and all the others, it was too late. Because Americans had gotten used to what political scientists would call "home rule." Home rule indeed it was. Of course, independence was the result.

A third source, very important if you think about the time at which we drew our basic documents, was natural law thinking. Because the Enlightenment was at its height in the latter part of the 18th century, educated people around drawing room tables in Williamsburg or Philadelphia, Edinburgh or Paris would have read the same books and talked about the same ideas. There was what was called the common core of inhabitance—the notion that if you stripped away differences of nationality that, at base, people aspire to the same principles of human dignity and other aspirations.

Well, all of these ways of thinking about rights, they're analytically different, but they all merge in the American consciousness. So whenthe framers sat down to write the first Bills of Rights, there was some experimenting. It was very much an empirical age—the same age that produced the great Constitutions also produced the embryo of modern science. The Scottish Enlightenment, in particular, which so influenced James Madison, was alive in Edinborough with experimentation, and scientific evolution as well as thinking about economies and philosophy and politics. So in Williamsburg in 1776, George Mason penned the Virginia Declaration of Rights, which was the prototype of the other state Bills of Rights and the federal Bill of Rights. The other states followed suit, but no two sets of documents were quite the same. It was a very experimental period. By the time Madison selected 12 proposals out of 200 that went to the states in 1789, two failed, ten were passed. By that time there was a large body of knowledge as to what these rights were thought to mean and which ones ought to be in the Constitution. At that time there was extraordinary international traffic in thinking about rights. There was Jefferson in Paris as American Minister, and he was very fond of reporting to his French friends what the Americans were doing. When Virginia passed its statute of religious freedom in 1786, Jefferson had it translated into French and Italian and distributed it on the Continent. It found its way into Diderot's *Encyclopedia* and in turn, Jefferson would report back to Americans on what the French were doing.

Now it's that sense of the traffic in ideas of how they don't stop at national boundaries, that makes it so appropriate to begin this conference talking about the rights we enjoy and wish to nurture as Americans. And talk also about rights as they're taking shape in Eastern Europe. There you have almost a Lockean sense of a social compact being struck. It's not a state of nature in the 18th century sense, but here are people like you—teachers, civic leaders, civic educators.

Imagine yourself in Budapest or Warsaw or Prague or other cities of the region trying to do what you now do in a place that has no modern experience, and in some of these countries, no experience at all of a pluralistic political system, of democratic elections or free press, of an independent bench, of independent Bars—all those things that we assume to be part of the infrastructure of American Constitutional democracy. So, in the region they're really having to feel their way a step at a time. And it's fascinating the extent to which they're really thirsty for the "American Experience." Not to copy it. It's bizarre to suppose that they could simply take our experience at large and just apply it. They know better and we know better. But they're searching for some of the core principles, and I think the two principles from the "American Experience" that may be the most useful in Eastern Europe are first, our notion of what rights are about—that you state in writing as law the rights that you consider to be so fundamental that they ought not to be messed with even by a legislative democratically elected parliament. And, secondly, and especially critical, the idea of judicial enforcement of those rights. It may well be that the most important single American contribution to political theory is the idea of an independent judge telling a democratically elected legislature how far you can go, no farther. That's an idea that has been very slow to take root in

other places because it's so alien to the notion of parliamentary supremacy. It's antithetical to the sense of popular sovereignty that was spawned by the French Revolution and yet, even in Western Europe and even more so in Eastern Europe, it's an idea which is, I think, taking root. And in it one finds the seed of the "American Experience."

Basically, Eastern Europe is learning from us. Let me develop the meat of this, what I really want to say to you. While these people in Eastern Europe are trying to build a democracy and plant the seeds of constitutionalism, they're looking to our experience. But it seems to me that the best way to consider our bicentennial of our Bill of Rights is to turn the question around and say what questions we ought to be asking, not about them, but about us—about this "American Experience" as it moves into its third century. Let me share with you several thoughts that I would put as a kind of agenda for thinking about the Bill of Rights as its third century begins.

"What the Bill of Rights does, in effect, is create a kind of continuing seminar in free government, dialogue over the means of living together under conditions of order and liberty."

—A.E. Dick Howard

First is to use the occasion as a history lesson—to learn the lessons of American history, the roots, the origins of our thinking about rights—how they emerged and in particular, to reacquaint ourselves with the Founders' clear-headed notion about power and about abuses of power. And why it's critical to have a statement of rights and a mechanism for enforcing rights as ways of safeguarding those very rights.

Secondly, to use this period of thinking about the Bill of Rights as an occasion for appreciating the force of ideas. A lot of debunking goes on, sort of Freudian psychology and Marxist economics and free-marketeer economics and all sorts of movements where people are searching for some single, easy principle that kind of explains it all—some force, alien force, that operates to make people the way they are. I think that recovers what the Founders understood, that ideas matter—that ideas move people. And they can be good ideas or bad, but our system is built on ideas, and I think it's worth teaching about.

Thirdly, to take this moment to reassess the vitality of the Bill of Rights. They're not self-executing. They don't prosper in a vacuum. They really need a good deal of support, popular and legal. Mention has already been made by J. Butts of the changing face of the U.S. Supreme Court. Robert Bork didn't get on, but others have and will. The Court, as it was known in the Warren Court era, has now passed from view. Its very architect, William Brennan, stepped down last year. In many ways, he was the one who held the line. For years after his ideas should not have prevailed—they did. He was a great tactician. He was the Stonewall Jackson of the Burger-Warren era. He'd make do with fewer troops, but win battles all the same. He's gone—it's a different Court. It's the Rehnquist Court, which, good or bad, is a different Court from the one that went before. And I hope we will hold to their custodianship of the Bill of Rights.

Fourthly, I would consider the Bill of Rights as a social document—not simply as a lawyer's document, but as a document that reflects the hopes and aspirations of a people. A document that unleashes a nation's talent. If we think of the 14th Amendment's equal protection clause doing that, and of course it does, so do the Bill of Rights by creating an open society, freedom of conscience, speech, and expression, by guaranteeing fairness in criminal procedure, by all the other guarantees. Basically, it frees up people to be what they want to be and can be in a free society. And it should remove obstacles that might be placed in their way because of gender, race or other circumstance.

Fifth, I would like to look to the Bill of Rights

to help foster a sense of shared values and community. That may seem counter-intuitive because we think of the Bill of Rights as something that people invoke when they want to create a controversy. They place the Bill of Rights between themselves and government and typically between themselves and a political majority. Well, one should not be distracted about what I would like to call the fuss fallacy. Namely, it's much more fun to think about arguments than it is consensus. Newspapers are sold by all the arguments that people have, not by the things that people agree upon. The Bill of Rights, like the Constitution, can be common ground—rather than the country creating the Constitution, the Constitution created the country. It actually became to us what the crown has been thought to be in Great Britain.

Finally, and here I hope the metaphor will be appropriate to this particular group, to use the Bill of Rights as a textbook—to think of it not simply as something lawyers and judges debate and pass upon, but to think of it as something through which one teaches the basic values of citizenship—what this organization, what this council is all about. Use it to teach how we pass basic values from one generation to another. Use it to understand the basic meaning of self-government by a free people. Because it's through thinking about, arguing about, applying the Bill of Rights that one actually poses the recurrent questions of a free society—how one accommodates competing values, things like liberty versus equality, or stability versus change, how one resolves the tension between, in a free society, heritage and heresy. One can look at the Bill of Rights for that. What the Bill of Rights does, in effect, is create a kind of continuing seminar in free government, dialogue among the people over the nature and uses of their institutions of government, dialogue over the means of living together under conditions of order and liberty.

Now I cast about for a way to sum all this up. How does one capture in an aphorism the meaning of the Bill of Rights and its appropriate method of study during its bicentennial period? I go back to the same Virginia document I mentioned earlier, George Mason's Declaration of Rights of 1776. I can't think of a much better way of putting it together than what he laid down in language which is still, I'm happy to report, in the Virginia Bill of Rights, put in 200 years ago or more. It says that, "No free government, nor the blessings of liberty, can be preserved to any people but by a frequent recurrence to fundamental principles." It's a lovely phrase—"frequent recurrence to fundamental principles." And that I would submit to you as a suitable challenge for the bicentennial of the Bill of Rights and perhaps a point of departure for this conference. Thank you very much.

Discussion Questions

1. What is meant by the term "absolute right?"

2. To what extent does the Bill of Rights provide absolute rights?

3. How does the American concept of rights differ from other countries' interpretations of rights?

4. What aspects of the Bill of Rights have had the most impact on Eastern Europe's development of similar documents?

1991 McGance Awards

McGance Award Recipients Honored at 1991 Jennings Randolph Forum

Tom Dawson, nominated by the **Center for Civic Education,** has served since 1969 as Administrative Assistant to Congressman Neal Smith (D-Iowa), a senior member of the House Appropriations Committee and Chair of a major subcommittee. Dawson has a legislative assignment to follow the Appropriations Subcommittees on Labor, Health and Human Services, and Education. Dawson has been a strong advocate of federal funding for programs involving civic education, including the Department of Education programs under the law-related education act, the Ellender Fellowships administered by the **Close Up Foundation,** and the programs of the National Bicentennial Commission.

Shirley Sagawa was selected by **CAC**'s Executive Committee for the 1991 Philip V. McGance Award for Exceptional Public Service to acknowledge her leadership in drafting the National and Community Service Act of 1990. While serving on the Council for Youth Policy, Ms. Sagawa was involved in every step of the legislation's process–development of youth and corps community services programs, Senate and House passage, White House negotiation on the conference report. Currently an attorney with the National Women's Law Center, she remains committed to the implementation of the act. Nominations for Ms. Sagawa were submitted by **People for the American Way** and the **Constitutional Rights Foundation**.

How Do We Deal With First Principles?

Dr. Herbert Atherton opened the first Plenary Session. The following is an edited version of his remarks.

It is a pleasure for me to be associated once again with an event sponsored by the **Council for the Advancement of Citizenship.** I have pleasant memories of past associations and of the many collaborations of our two organizations. I am here to offer some reflections from a sometime historian of Anglo- American history and educator, who has had the rare opportunity to work these last few years with Chief Justice Burger on the educational programs of the Constitution's Bicentennial.

Most of you have seen the Commission's 1991 calendar on *The Bill of Rights and Beyond.* It has proven to be the most successful in our series of Bicentennial calendars and, indeed, one of our most successful publications overall. A quarter of a million copies have been distributed to schools, libraries, courts, government agencies, USIA stations, Peace Corps volunteers, and a variety of other institutions and organizations in this country and abroad. Our supply is exhausted, though plans are well under way for reissuing the contents of the calendar in more permanent book form.

Given this success, it is disconcerting to recall that the calendar is a publication that almost didn't happen. A year or so ago, there was some doubt at the Commission about whether we should attempt such a publication at all.

The problem was the subject matter—the Bill of Rights. I suspect that from the outset of the Bicentennial, there may have been some mixed feelings about the subject of our fifth and final year. On the one hand, the Bill of Rights provided a grand subject with which to conclude the Constitution's two hundredth birthday. It was, if you will, the "sexiest" part of the Constitution, certainly that part of our constitutional heritage with which most Americans are most familiar and consider most relevant to their personal lives.

On the other hand, the Bill of Rights is a large and diverse subject, covering a vast extent of constitutional law and presenting something of a mine field of ideological controversy. We had managed thus far to steer clear of the heavy weather of unwanted contentiousness. Such smooth sailing didn't appear so likely when it came to the Bill of Rights.

About a year ago the calendar's prospective editor on staff and I met to discuss what we should do, what strategy we might take in dealing with so difficult a subject. He suggested that the calendar's text and illustrations might emphasize the historical origins of the various Amendments, where each right came from, how it began, what nurtured it, how it found its way into the Bill of Rights. At the same time we could apply very broad strokes to current issues and application.

We both saw immediately the appropriateness and benefits of this approach. It would avoid the controversies of the moment and at the same time, serve a useful educational function, one that was entirely consistent with the Commission's primary mission of historical commemoration—focusing the nation's attention on the origins of our constitutional heritage. And this is what we did. The calendar became primarily an exercise in historical exploration, a look into historical first principles.

The next several months of research and writing proved to be a stimulating and enlightening experience for those of us involved with this project, perhaps especially stimulating since most of us were neophytes at least in some areas of the subject. For me it was a wonderful opportunity to return to the study of history and to re-visit some old friends from my teaching days— the great constitutional conflicts of the 17th century; the medieval origins of the common law and representative institutions of government; the causes of the American Revolution.

This pursuit of historical first principles also gave me a much keener appreciation of our Bill of Rights—its greatness as a tract of its time, i.e., what it says about the convictions and concerns of the Founding generation; its enduring wisdom in what it secured from the experience of the past for the use of the future. This experience also heightened my admiration of James Madison, often called the "Father of the Constitution," perhaps even more deservedly the "Father of the Bill of Rights."

We often seem to view the Bill of Rights as a set of isolated abstractions, prized, frequently personalized, but devoid of the historical warp-and-woof which made them, and often neglected as a totality, in its sum as well as its parts as an important political statement. The media, unavoidably perhaps, contribute to this. We are reminded of the Bill of Rights on TV or in the newspaper usually through the coverage of individual cases and particular amendments. Law schools probably contribute to this "balkanization" of the Bill of Rights as well, through their use of the case-law method of teaching.

Our months of exploration into the historical origins of the Bill of Rights helped to remedy for us the shortcomings of this truncated view by providing a greater appreciation of its place in the long history of human rights and its political importance of the document as a whole.

James Madison's role remains the key to understanding the nature of the document itself. As you probably are aware, there is considerable irony in the fact that Madison became the Bill of Rights' principal initiator and architect. Convinced that a national bill of rights was both unnecessary and possibly dangerous, he had been one of the idea's major opponents at the Constitutional Convention and early on during the battle for the Constitution's ratification.

The popular demand for a bill of rights which became evident during the ratification debates, together perhaps with the persuasions of Jefferson and Mason, changed Madison's mind. At the very least, a national bill of rights became an expedient necessary for the Constitution's ratification.

Madison committed himself to support the idea. True to his word—and no doubt to make sure that the adoption of a national Bill of Rights was accomplished in a manner consistent with the principles of the Constitution and would serve to head off other major changes—Madison took the leading hand in introducing and drafting the 12 proposed amendments, which the first Congress approved in September 1789 and referred to the states for ratification.

As remarkable as Madison's about-face on the issue is the manner in which he and his cohorts crafted the Bill of Rights—how they chose from the several hundred amendments suggested by the states the twelve which were eventually settled upon and the language used in crafting those amendments. Madison could have taken a different approach—had he done so, our Constitutional history might have been far different.

Their selection and sequence are not random. The first two and last two proposed amendments assert the principle of popular sovereignty to limit the powers of the national government by imposing limits on the ability of Congress to change its apportionment or its compensation for its members without the approval of the people and by asserting, in what were to become the Ninth and Tenth Amendments, a general assertion of the principle of enumerated powers—all power save that which is delegated to the national government remains with the states or the people, including some rights not mentioned in the previous Amendments. I shall have more to say about these two Amendments later.

What were to become the first, second, and third Amendments embody the ideal of liberty, intended to prevent the national government from exercising tyrannical sway over its citizens in the course of their everyday lives. The fourth through eighth Amendments—the heart of the Bill of Rights—embody the ideal of justice, defining those protections which the government must honor in the administration of the law. It would be left to a later time—the adoption of the Civil War Amendments and the franchise Amendments of this century—to more fully write into the Constitution the third great ideal of equality.

The Ninth and Tenth Amendments set aside, what is equally remarkable about the provisions of the Bill of Rights is their eminently practical and pragmatic character, focusing on substantive essentials and prudently reflecting the wisdom of the past.

The First Amendment offers a good example. Though not originally the "first" of the proposed Amendments (the provisions concerning Congressional apportionment and pay have never been ratified), it has taken on a symbolic significance which makes it seem "first" in importance for many Americans.

It secures those most fundamental rights of conscience—the people's right to worship, speak, write, assemble, and petition as they please—not by proclaiming in abstract terms the desirability or beneficence of such rights, but rather by following the English practice (expressed in the Bill of Rights of 1689) of securing a positive end desired by asserting a negative—specifically prohibiting the government from doing something that would deny that end. The Amendment says simply that "Congress shall make no law..." restricting such freedoms. Madison and his colleagues well knew from the experience of colonial and state governments in America and from their English past, that any threat to freedom of conscience in America at the national level was likely to come from the legislative branch—through statute—and therefore, denied to the newly established Congress the power to establish a state religion,or civilly divisive religious minorities, or to curb the people's right to express themselves or collectively organize to petition for the redress of grievances.

Because of his experience at working to disestablish the Anglican Church in Virginia, Madison probably cared most passionately about the First Amendment, especially its safeguarding of freedom of religion. He saw correctly that free from the trammels of statutory favoritism and persecution, religion would flourish in the new nation and provide that diversity of faiths upon which true freedom of religion would ultimately depend.

Let's take another example, the Second and Third Amendments, about which I shall have more to say in my conclusion. Like the First Amendment most closely associated with the principle of liberty, they have been, along with the Ninth and Tenth Amendments, the least understood and the least constitutionally consequential part of the Bill of Rights. Those demanding a Bill of Rights—Anti-Federalists like Eldridge Gerry of Massachusetts—would not, however, have considered them inconsequential or irrelevant. They would have ranked these two Amendments right up there with the First as essential bulwarks of the citizen's liberty, vital safeguards against the tyranny of government.

A gulf exists, however, between us and the Founding generation, a gulf which is, itself, a tribute to the success of our constitutional system of government and that system's success over two centuries in effectively maintaining civilian control of the military. Except for the defeated South in the years after the Civil War, this nation has never experienced military government. America has no "Junker" or "junta" tradition.

It is difficult for us to fully appreciate, therefore, the deep-seated fear of military tyranny that haunted the founding generation. Yet there it was, shaped by their own experience in the American Revolution and by the lessons of the past—a fear of standing armies, of the domestic peril of a professional military. Not only their own experience with British soldiery during the Revolution, but the legacy of the 17th century seemed very near—Oliver Cromwell, James II, Louis XIV—names which invoked painful memories of military tyranny.

So great was this perceived threat that many Anti-Federalists called for an outright ban on a professional military in the new republic, and proposed a constitutional amendment to that effect. It is perhaps a affirmation of Madison's genius and the wisdom of the men of the First Congress that they resisted such demands. Rather than attack the institution itself (a professional military), the Second and Third Amendments provide specific checks on and remedies for the abuse of that institution. The original Constitution had provided for the existence of a professional army, but also placed (after the example of England's Revolution Settlement of 1689) controls upon it, designed to assure civilian control of the military. These checks included Congressional authority for the institution of martial law and military appropriations.

The Second and Third Amendments, echoing similar guarantees in the Petition of Rights and the Bill of Rights of 1689, took the same tack. They provided very specific and practical checks upon military tyranny by (1) nurturing a civilian military as a counter-balance to a professional army, and (2) prohibiting one of the most ancient abuses of standing armies, the quartering of soldiers upon the civilian population. The Second and Third Amendments, like the First, secure rights that are pragmatic, specific, focused—realizing general principles in a practical way.

Let's take another example. The heart of the Bill of Rights—Amendments Four through Eight—has to do with the administration of justice, in something close to a logical order, from the government's powers of investigation through trial procedures to punishment. There is a potpourri of specific judicial rights contained within these amendments, which at first glance might not make sense in their clustering together. They represent, however, the collective wisdom of centuries of experience in English and American law. In the case of the jury system, that experience reaches back through the centuries to Plantagenet England, and indeed, even earlier.

"The document is more than a legal brief for judges and lawyers. At a deeper, more political and symbolic level, the Bill of Rights is an eloquent statement of those essential principles of human rights that it is ultimately and foremost the purpose of government to serve—principles enshrined in a document to be set before the eyes of each generation as a reminder of why we have government in the first place."

—Dr. Herbert Atherton

Each of the specific judicial guarantees contained within these Amendments represents a flashpoint in the long struggle between the power of government and the interests of the accused. Most summon up memories of famous cases and famous people from the great constitutional struggles between the Crown and Common Law in the 17th century, and the more recent experience of the colonists' struggle with Britain. In some respects, this collection of rights, embodying as they do the principle of justice, were the most important in the minds of the Framers, who saw in the administration of the law the greatest potential for tyranny.

This perhaps explains why almost all the rights secured in the original Constitution have to do with due process of law—the right to trial by jury, the strictures placed upon conviction for treason, the abolition of bills of attainder, and that most important right of all, the writ of habeas corpus , which Blackstone called the "Great Writ of Liberty" and which Sir William Holdsworth has described as "the most effectual protector of the liberty of the subject that any legal system has devised."

The "Great Writ" represented that fundamental right-making government accountable at law for its actions against its citizens, which, together with the prohibition of excessive bail, assured the prompt administration of justice and made it possible for all those judicial rights contained in the Fourth through Eighth Amendments—the rights to a speedy and public trial, to counsel, to protection against self-incrimination, etc.—to take effect. The writ of habeas corpus made certain that there would be no Bastilles and no tyrant regimes and, like the other judicial rights secured in the Constitution, provided practical, specific, time-proven protections before the law.

The Ninth and Tenth Amendments, to be sure, contradict much of what I have been saying about this practicality and specificity in the Bill of Rights. Neither is specific, and neither has had much application at law during the last two centuries. They are what Chief Justice Burger has described as 'hortatory' amendments—advisory, meant to assure both the advocates and opponents of the Bill of Rights that any such enumeration of specific guarantees should not be construed to imply the non-existence of others.

If of little consequence to the lawyers, however, these two Amendments draw the attention of historians and political scientists. Though they might not have much signifi-

cance in constitutional case law, the Ninth and Tenth Amendments embody principles and ideas that have been of considerable significance to the history of the country. The Tenth Amendment, in particular, goes to the heart of the principle of federalism and the nature of the Union. The meaning of that Amendment provided the great constitutional issue in the first decades of our nation's history and required our nation's bloodiest war to eventually resolve. Moreover, for all their generality, the Ninth and Tenth Amendments should force us to see the Bill of Rights as a whole, as well as in its separate parts. That document is not merely a collection of individual rights. In its totality, it is a coherent and powerful statement of the single most important principle in our Constitution—popular sovereignty—the power of "We the People." As my colleague at the Commission, Dr. Jack Barlow, likes to point out, the Bill of Rights ends where the Constitution began, by asserting the primacy of "We the People."

The document is more than a legal brief for judges and lawyers. At a deeper, more political and symbolic level, the Bill of Rights is an eloquent statement of those essential principles of human rights that it is ultimately and foremost the purpose of government to serve: principles enshrined in a document to be set before the eyes of each generation as a reminder of why we have government in the first place.

Of what relevance is this history in an age when the Bill of Rights seems to be having a hard time keeping up with the implications of modern science and technology, in a society so very different from the one which produced it? To be sure, the Bill of Rights has taken a strange course during its two centuries. As Professor Walter Berns points out, it has taken on a course almost the inversion of the one intended by those who framed it. Originally intended to be a set of limitations imposed by state and local government upon the national government, through most of our history the Bill of Rights has rarely served that purpose—or even had occasion to do so. Instead, it has been inverted, if you will, by the 14th Amendment into a set of limitations imposed by the national government upon state and local governments. This topsy-turvy irony the framers of the Bill of Rights would no doubt have some difficulty in understanding.

Still, the question invites a number of plausible answers. The lawyer might invoke the respect for historical continuity recognized by legal precedent. The historian might respond by saying that it is impossible to understand the end of the story if you don't understand the beginning. Without appreciating the origins of our rights, we won't be able to distinguish the essential principles from the application of those principles to changing circumstances—an all important distinction indeed.

George Mason's statement about the importance of each generation having a recurrence to first principles prompts us to consider the most basic questions about the nature and purpose of government, and about ourselves. I think that he meant that recurrence to first principles to be an honest consideration, one that did not always yield easy answers.

To make my point, let me return by way of conclusion to the Second Amendment—an odd choice, perhaps, but one which may demonstrate the importance of returning to first principles.

At the time we were working on the calendar text about that amendment, a book publisher friend of mine called to my attention two recent law journal articles, which called into question the glib dismissals and easy interpretations of that amendment in the current controversy over gun control.*

Though they took somewhat different tacks, the gist of these two pieces argues that the urgent issue of the regulation of firearms today has led many to regard the Second Amendment as an embarrassing relative, to be hidden away in a back bedroom whenever company comes. Worse yet, the articles suggest, has been the danger of misinterpreting that Amendment—by advocates on both sides of the controversy.

Both articles suggest that those who favor stricter regulation of firearms would be ill-advised to base their case on an "original intent" reading of the Second Amendment. Through a careful analysis of the actual text of the Amendment and an exploration of pamphlet literature and other contemporary source materials, the two scholars maintain that those who see in the Amendment a right of the individual to bear arms more fundamental than the justification of a "well regulated" mi-

litia may be correct. Their arguments conclude that the Second Amendment is not only an endorsement of the collective right to bear arms, not only a somewhat ambiguous statement of the idea of a citizens' militia and that at bottom and most fundamentally, the Second Amendment does, in fact, secure the individual right to bear arms as the ultimate recourse of every citizen to resist, in extremis, the tyranny of government.

And as for those who dismiss such ideas as quaintly impractical and irrelevant in an age of nuclear weapons and other high-tech military hardware—the stuff of paranoia for hate groups and oddball sects holed up in wilderness cabins with their guns and rations—Professor Levinson suggests a rhetorical question: would the regiments of the British Army who have served in Northern Ireland during the last quarter-century consider the ability of ordinary citizens to bear arms an impractical, preposterous idea in today's world? Conversely, what might have happened in China two summers ago if the Chinese people had access to private arms on a large scale? Other examples in today's world could be cited, all suggesting that perhaps we take too much for granted.

Now my point is not to argue that these two articles' reading of the Second Amendment is correct, still less to take a position on the issue of gun control. One could find historical evidence for other interpretations of the framers' intent. Moreover, whatever one's reading of that troublesome Amendment, there is ample legal and constitutional precedent for maintaining that the rights contained in the Second Amendment are not absolute and unqualified.

Rather, my point is that recurring to first principles, forcing ourselves from time to time to confront those most basic questions which helped to shape our constitutional heritage—questions having to do with the nature of the individual human being, the ends of government, the trade-offs between liberty and order, the potential for tyranny even in the best of governments, and the recourses of the citizen when confronted—presents us with difficult, sometimes even troubling queries, necessary, however, to better understand the basis of our constitutional legacy.

And this process, I suspect, is at least part of what George Mason had in mind when he enjoined each generation of Americans to do what we are doing today.

*Sanford Levinson, "The Embarrassing Second Amendment," *Yale Law Journal*, Vol. 99, pp. 637–659; Stephen P. Halbrook, "To Keep and Bear Their Private Arms: the Adoption of the Second Amendment, 1787–1791," *Northern Kentucky Law Review*, Vol. 10/13, pp. 13–39.

Discussion Questions

1. How do current perceptions of the Bill of Rights differ from those of the Founding Fathers, especially those of Madison?

2. Why are the Ninth and Tenth Amendments termed "advisory?"

3. Describe differences in ways lawyers and historians might view the Bill of Rights.

4. Why can both advocates and opponents of gun control use the Second Amendment to support their positions?

History, Philosophy, and Contemporary Issues of the Bill of Rights

The following are edited remarks prepared by presenters at the Break Out Sessions.

The First Amendment Freedoms of Assembly and Petition

by John J. Patrick

The First Amendment's "right of the people peaceably to assemble, and to petition the Government for a redress of grievances" has, in combination with Section I of the 14th Amendment, protected individuals in the United States against abridgment of these fundamental freedoms by either the federal or state governments. These fundamental freedoms, of course, predate the United States Constitution, having their origins in our English legal heritage and the colonial governments of British North America. The English Bill of Rights of 1689 affirmed, "That it is the right of the subjects to petition the King and all commitments and prosecutions for such petitioning are illegal." Forty-eight years earlier, in 1641, Section 12 of the Massachusetts Body of Liberties guaranteed freedom of speech and petition at public meetings, so that "Every man. . . shall have liberty to . . . present any necessary motion, complaint, petition, Bill or information. . . ."

During the founding period of the United States, the freedoms of assembly and petition were included in several state constitutions, including the acclaimed Massachusetts Constitution of 1780, which greatly influenced the federal Constitution of 1787. By the 1780s, the twin freedoms of assembly and petition were recognized as part of the American consensus on the constitutional rights of individuals. Therefore, it would have been unusual if James Madison had not included them in his proposal to the First Federal Congress, June 8, 1789, to add "the Great Rights of Mankind" to the Constitution.

Madison presciently said in his June 8th, 1789 address to Congress, that "independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution." And so it has been, especially in this century, as the freedoms of assembly and petition, along with other fundamental constitutional rights of the people, have been protected by an independent federal judiciary using its power of judicial review. First Amendment freedoms have been expanded through judicial interpretation across two hundred years of constitutional history in the United States, and today, the right of assembly also includes the right of association. Furthermore, the rights of assembly and petition are indisputably protected by the "due process" clause of the Fourteenth Amendment against infringement by the states.

> *"We are challenged today, as were the people involved in the Skokie case, to decide critical questions about how to balance the private rights of various types of individuals, including some who are hateful (e.g., followers of Nazism), with our sense of the public good."*
>
> —John J. Patrick

If decisions of the independent federal judiciary have been a critically important part of the history of constitutional rights, so have the actions of responsible citizens. Constitutional rights are merely "parchment barriers"—as Madison once said—unless individuals bring cases to the federal judicial system to protect their rights. The satisfactory enforcement of

legal decisions about rights also depends upon a supportive citizenry that will hold public officials accountable as guardians of fundamental freedoms such as those in the First Amendment. This kind of responsible citizen action is necessary to make the machinery of government work for the good of the people.

The freedoms of assembly and petition, like other constitutional rights, have limits. Justice Louis Brandeis wrote in 1927 (Whitney v. California), "Although the rights of free speech and assembly are fundamental, they are not in their nature absolute. Their exercise is subject to restriction, if the particular restriction proposed is required in order to protect the State from destruction or from serious injury, political, economic or moral." These limits must be justified, as Brandeis emphasized, by a compelling public interest. "Only an emergency can justify repression," said Brandeis. "Such must be the rule if authority is to be reconciled with freedom. Such, in my opinion, is the command of the Constitution. It is therefore always open to Americans to challenge a law abridging free speech [petition] and assembly by showing that there was no emergency justifying it."

Citizens of a constitutional democracy will forever be challenged by issues about what does or does not constitute an "emergency justifying" a particular limitation upon freedom of expression. They must respond, case-by-case, to this generic question: **At what point, and under what circumstances, should majority rule be limited by the higher law of the Constitution in order to protect fundamental freedoms and rights of individuals in the minority?** Justice Oliver Wendell Holmes reminded us about the occasional difficulty of answering this question when he wrote (United States v. Schwimmer, 1929), "If there is any principle of the Constitution that more imperatively calls for attachment than any other, it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate."

An especially poignant example of Holmes's "principle of free thought" was provided in Village of Skokie v. National Socialist Party of America (1978). In this case, the Court decided to permit "followers of Nazism" flaunting the Swastika to publicly assemble to express their thoughts. In this decision, the Court appeared to disregard the feelings of the majority in a community that included many persons who had suffered unspeakable horrors at the hands of Hitler's followers in Europe.

The "Skokie" case presaged a hot controversy of the 1980s and 1990s about the limits of First Amendment freedoms of speech, press, assembly, and petition, when these rights are used to assault the beliefs and sensitivities of vulnerable minorities—racial, ethnic, sexual, religious, etc. We are challenged today, as were the people involved in the Skokie case, to decide critical questions about how to balance the private rights of various types of individuals, including some who are hateful (e.g., followers of Nazism), with our sense of the public good.

Should we follow the guidance of Judge Decker (United States Court of Appeals for the Seventh Circuit) in his opinion overruling the Skokie ordinances prohibiting Nazis from publicly assembling to express their heinous views? Decker wrote, "The long list of cases reviewed in this opinion agrees that when a choice must be made, it is better to allow those who preach racial hate to expend their venom in rhetoric rather than to be panicked into embarking on a dangerous course of permitting the government to decide what its citizens must say and hear."

Is Judge Decker right? We shall continue to use our First Amendment freedoms of speech, press, assembly, and petition to respond to this critical issue.

Freedom of the Press

by Jean Otto

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or of the right of the people peaceably to assemble to petition the government for a redress of grievances." Forty-five words that have, as much as any part of our Constitution, shaped what this nation has become. Around the world, 200 years after our Constitution was ratified, most of the world community still has nothing approaching the freedoms of the individual mind and the personal conscience that the First Amendment implies.

It is a blessing of uncommon liberty. It guarantees us the right to learn—not just what somebody wants us to know, but whatever there is to be learned. It lets us speak without fear of being imprisoned. It fuses thought to speech in a linkage that is essential to the value of both. A thought, an idea, a premise may have intrinsic value, but until the mind responsible for forming them shares them with others, with all the inevitable challenges and perspectives that others may bring, they cannot influence the world.

So thought and speech are the first two legs of the triumverate of intellectual freedoms that have blessed this country. The third is a free press—free to report, free to analyze, free to criticize, free to speculate, free to educate , free to comment. It as always been controversial. It has always been threatened. It is no less so today than at any time in the past.

In *Federalist Paper No. 84*, Alexander Hamilton wrote "What is liberty of the press . . . its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government. And here, after all, . . . must we seek for the only solid basis of all our rights." In other words, freedom of the press is only as strong as the public's support of it. If citizens are willing, for whatever reason, to censor the press, there are plenty of jackals at the ready.

Going back to the days of its creation, it should be noted that those who formed this government were not eager to write a Constitution that included these basic individual liberties. It was left out of the Constitution because, as our forefathers explained, everybody knew that free speech and a free press were implied, basic, universal rights.

But the people in the states, being asked to ratify that Constitution, rebelled. They would not ratify, they said, unless those rights were made specific and written down. They knew well the risks of assuming that any freedoms were guaranteed by someone's belief that they were protected. No Bill of Rights, they said, no Constitution. No ratification. So the House of Representatives, meeting in New York, was given the task of defining what rights must be guaranteed to the citizens of this nation.

Because he thought Congress was moving too slowly, James Madison collected proposals to amend the Constitution from various state ratifying conventions. Thomas Jefferson suggested that "a declaration that the federal government will never restrain the presses from printing anything they please." Boiling down the various proposals, Madison came up with nine amendments, which he introduced to his compatriots on June 8, 1789.

Madison considered all the statements he'd received regarding a free press, and factored in his own belief that one of the most serious flaws of the British system was the absence of safeguards for the press. He drew upon George Mason's Virginia Declaration of Rights to propose this key component of a free society. His suggestion read, "The people shall not be deprived of their right to speak, to write, or to publish their sentiments, and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable."

He went down the line, listing, in simple but eloquent language, those liberties that eventually became the Bill of Rights. Then it took six weeks for him to get the House back to the subject. He insisted that the House become a committee of the whole to draft amendments to the Constitution. Instead, a small select committee was chosen, composed of Madison, anti-Federalist Roger Sherman of Connecticut (who didn't want any amendments at all), and John Vining of Delaware. Eventually, the committee included one member from each state, with Vining as chairman.

With Madison's previous work as a guide, the group worked quickly, adopting almost without change, his original wording. It approved a speech and press clause that read, "The freedom of speech and of the press, and the right of the people peaceably to assemble and consult for their common good, and to apply to the government for a redress of grievances, shall not be infringed."

Madison wanted the amendments integrated into the Constitution itself. Vining and Sherman feared that if the original language of the Constitution were changed, Congress would wind up changing all kinds of things, such as the basis for representation, and the power of taxation. So after furious debate, the House agreed

to append the amendments to the Constitution's end.

Then it went to the business of approving the special committee's report. If you think all those who founded this nation were statesmen, you would have loved listening to that debate. Theodore Sedgewick of Massachusetts argued that there were many inherent rights, such as going to bed when one wished, wearing a hat if one wished, riding horse in the afternoon. If we were to guarantee some inherent rights, he said, why not all of them.

Madison took his comments seriously. "Let us confine ourselves," he advised, "to an enumeration of simple, acknowledge principles." The House then, by a 2/3 vote, decided to leave the original language of the Constitution intact, to append 17 amendments at its close, and to send them to the Senate.

It is known that some senators didn't like Madison's language. They merged three articles on trial by jury and other court procedures into other amendments. And the First Amendment emerged with the wording I quoted at the beginning. By June 1790, nine states had approved the amendments, which had been pared to ten. It would take another year for the tenth state—Vermont—to ratify. And on December 15, 1791, Virginia became the required 11th state to ratify the amendments and make them part of the Constitution.

You all know the quote of Jefferson that, given a choice of government without newspapers or newspapers without government, he would not hesitate to choose the latter. You probably also know that, a few years later, he said that it was almost impossible to believe anything that was written in the press.

That contradiction has been at the core of the debate over a free press ever since. People embrace the PRINCIPLE of a free press, but when it gets down to specifics, they are not sure that the press should be free to say what it chooses, or report what it considers news, or criticize government, or invade the privacy of either public or private figures. Who, they ask, elected YOU?

Through wars, including the last one in the Persian Gulf, through bad economic times, through every scandal that has rocked business and government over 200 years, through crimes and accusations of crimes, a press that is essentially free to report what it finds out has been the target of people who would prefer that it not tell so much, that it not be so critical, that it be more fair, more accurate, more thorough. That it be held responsible, though, by whom, is never made clear. By those it criticizes? By those whose words and deeds it reports? By those who would cover their incompetency, or their skulduggery?

Some months ago I talked to some people who work for the Interior Department, and they wanted to know how to get information to the press without risking their jobs. A young political appointee, in from Washington, stood up and said, "Wait. Why should government tell people what it's doing until it is accomplished? If you tell them before it's all worked out, before it's done, some of them might interfere. They might create problems." My response was, "Madam, precisely. That's what a democracy is about. Giving people a say in advance of final decisions. Letting them into the process."

A free press is not a privilege for the guy who owns a newspaper, or a broadcast station. A free press is a public right—part of the right to think, to learn, to speak. A free press is what allows every citizen to stand on the same base of information and knowledge that every other citizen enjoys. A free press unifies our nation by giving us all the same information on which to make our individual decisions. WE may not want the same things, or believe the same way, but we certainly can know whatever is basic to making our own decisions.

About a year ago **People For the American Way** published a study, "Democracy's Next Generation." Students, when asked which rights they would hold most dear and which they would be willing to give up, said they would hang onto freedom of religion and speech, and the rights to choose their own careers. The one right they would be willing to give up was freedom of the press. Somehow, they do not see, as Madison, Jefferson, Justice Hugo Black, and Justice William Brennan did, that it is a press free to report what is happening that makes all the other components of the Bill of Rights work. They do not understand that it is a free press that keeps government from being secret government. They do not see that sup-

pression of ideas, or of religion, or of speech, are held at bay by a press that is free to report what is happening out there. They do not know that the First Amendment guarantees are the enabling law.

What they do see are errors of fact, errors of judgment, errors of excess, errors of timidity, violations of personal privacy. They see the press as a monolith, wherein control rests with a very few people. They see it as a conspiracy in which decisions about what people should or may know are handed down by those who have their own axes to grind.

Anyone who knows the press knows the folly of such ideas. There is no more rambunctious, independent, competitive industry in the country—probably in the world. It will take orders from nobody, including any of its own. Does the press make mistakes? Of course it does—it is composed of human beings. People make mistakes. If they wish to maintain their readability, they correct their errors and try not to repeat them.

But what the press does, deliver the information that is relevant to peoples' lives and help them make up their minds about issues large and small, is crucial to our system of government. That system says we shall govern ourselves. We cannot do that without information. We in the press do not fight for and gather information for ourselves. Or for government. We have one constituency—the American people. We are bound by a principle and a commitment. We have a responsibility to give people those facts they need to decide how to conduct their own lives and direct their nation.

We need to listen to what concerns our readers. We need to talk with them directly. We need, I must say, to be a little more humble. We need to be better at what we do. But without the support of the American people, the press of America will lose its freedom.

Just two weeks ago, Robert Wyatt, chief researcher of a study on public attitudes toward the First Amendment conducted for the **American Society of Newspaper Editors**, concluded, "If the news media had to depend on a vote of the American people today, I believe there would be no free press clause in that amendment, or it would be so severely qualified that it would become meaningless."

This is precisely what Hamilton warned about in Federalist Paper No. 84. Wyatt found that "up to one-third of the people in this free country do not support unconditionally the right to criticize political leaders or advocate any candidate for office one chooses." And further, "nearly 60% of Americans would not protect flag-burning as a protest at all, though the issue is polarized."

Professor Wyatt further noted that those who would protect press freedoms "only sometimes" based their decision on whether what is published is personally offensive, in bad taste or morally unacceptable, not on whether a right should be granted unconditionally to citizens in a democracy.

So there is a great deal to talk about here today, including whether America's young people have rights under the First Amendment, or whether they are suddenly, at age 18, entitled.

If any part of our Constitution, simply and clearly written, seems to be inviolable, it is the First Amendment. Yet no part of it seems to be more evolutionary than the still revolutionary concept that people may learn, believe, think, say and publish whatever they wish, without interference from government.

There is no part of the First Amendment that does not apply to the free press clause, for it is this that informs people of what is happening regarding all our freedoms. It is the guarantee of a free press that enables the press to let people know when speech, or religion, or assembly, or petition have been intruded upon by government, or anyone else. The free press clause creates a level expanse upon which all of the people of this nation can know simultaneously the information that unifies the country.

As with every other issue we face, the press is subject to public attitudes. When these are repressive, the press feels the impact. It is evident in court rulings, in legislation at all levels, in closed meetings or records, even in the letters to the editor saying that the press went to far.

In a democratic society, it is essential that we listen to where we are at any given moment. Courts, lawmakers, business, and every other

leadership component has an ear tuned to where the people are. The press can do no less, for as Hamilton said in Federalist Paper 84, the vitality of a free press depends on its being accepted by the people. And what people accept is constantly changing as our society moves in new directions.

If I were to ask what is one of the hottest topics involving change in public attitudes, I would guess that privacy would be on everyone's list. The issue's scope is enormous, many of its elements are still unresolved, and it represents how changing attitudes and changing law are affecting freedom of expression and of the press.

Privacy is a word that does not appear anywhere in the Constitution. Yet it is subject to legal interpretation all the way to the U.S. Supreme Court.

It was at the core of the abortion decision, and, before that, the contraceptive decision. The Supreme Court said, essentially, that when it comes to key decisions about reproduction and private activity between consulting adults, government has no right to interfere. Reproduction is a matter for adults to decide for themselves.

You all know the furor this has caused between those who hold opposing views. You've seen pictures of bombed abortion clinics, and of marches and demonstrations against those providing abortions or seeking them. You've seen the political fallout for candidates who concur with the Supreme Court on this issue, and on those who disagree with it. And you've seen the impact of public attitudes on a changing Supreme Court, with conservatives moving into the majority. At some point, the court may not merely modify Roe vs. Wade, but actually overturn it. It is not yet writ in stone that women have the right to terminate pregnancy. It is an issue that remains volatile for all that the Supreme Court has interpreted the law. What it shows is how our society, with its ongoing changes, affects the interpretation of the law.

The American public is growing increasingly protective of its right to be left alone. In my state, Colorado, there have been efforts for the last two years to close driver's license and car registration records to public and press scrutiny. The purported reason is to protect the safety of those caught up in domestic violence. Because those records were used a couple of years ago to trace the whereabouts of a woman whose husband had threatened to kill her, and in fact did so, many of us would close off what have traditionally been public records. This would also prevent finding out about driving records of people involved in accidents. It represents the first closing of doors on public records that are the everyday tools of the press. It has public support, because the public believes that no one—and that includes the press—should have the right to gather private information. The move to close public records is gathering steam, and we can probably look for more of it. It will have to be fought in every city and state in the nation if we are going to maintain the openness that is essential to telling people what is going on.

Privacy is also the central issue surrounding identification of the victim of an alleged rape at the Kennedy compound in Palm Beach, Florida on Easter weekend. Did the victim of that alleged rape, protected by Florida law from having her identity revealed in the press, have her privacy invaded by newspapers and broadcasters not bound by Florida law, printing not only her name but every bit of personal information they could find out about her? There is talk of suing the Florida newspaper that first printed her name.

Besides the legal ramifications of this case, there are also ethical considerations that bedevil the press, not just about this particular victim, but all adult victims of sex crimes. At the ASNE convention a few weeks ago, editors roundly debated whether protecting the identity of alleged rape victims while printing the names of the alleged rapists was fair.

I had many calls in recent weeks saying that accusations are not convictions, and even though some of those accused are found not guilty, all anyone remembers is that they are "rapists." Many people think that no names should be revealed without actual conviction of the crime. Some believe that protecting the alleged victim's identity encourages victims to report the crime, and that if they had to face friends and neighbors knowing of their plight, they would simply not report it. And that could have an impact on the incidence of the crime and law enforcement. Others say that so

long as we protect the identity of victims, we perpetuate the stigma associated with having been violated. That only when we identify rape as a crime of violence and not of sex, and stop blaming the victim for somehow causing it to happen, will we put this crime in proper perspective. It is an area of law that is unresolved. Even more, it is an area of social attitudes that is unresolved.

Privacy has other disputed areas as well. As more and more personal information about citizens is assembled in computers, with more and more government and business groups given access, there is growing concern that there is too little left for citizens to reveal voluntarily. Give someone your social security number, and you may also tell them your medical history, your financial record, what you eat for breakfast, and how many times a day you use the telephone. Many fear that we are losing our right to decide for ourselves what we reveal about ourselves. The press is up to its hips in controversy over privacy. It is at the core of the conflicts over the public's right to know and the right of the individual to have some protected space around information that he or she considers personal and private. In our time, it is almost inevitable that once we reveal information, for however sound a reason, to some agency, or business, it will turn up elsewhere.

Is there a difference in the amount of privacy an ordinary citizen can expect from the press and that accorded to public figures? A few years ago, at a First Amendment Congress, high school students almost unanimously said that they thought that public figures had the same right to privacy as anyone not in the public eye. The press should not hold public figures to any higher standard than the ordinary citizen. Those who drank too much, or were womanizers, should not have such things reported publicly. Wilbur Mills would never have been identified as a drunk. Jack Kennedy's sexual escapades, within the White House itself, would never have been revealed. Gary Hart's trip to Bimini on the Monkey Business would have been treated as a private matter.

Does this mean that our younger generation of citizens does not expect accountability from those who are elected or appointed to serve them? That they are willing to hold them responsible only for what they do as part of their jobs, with no overall accounting for their ethical and/or moral conduct? Or does it mean that each of them sees that, somewhere down the road, they may find themselves in a situation where they are vulnerable to scrutiny? I don't know, but there certainly is an interest in keeping their lives private, even, perhaps, at the cost of letting those who carry out the functions of government, or who make big bucks from the public's dollar, do the same.

Other issues in the news lately include whether the press was allowed, during the Gulf War, to do its job without undue censorship. It is a matter of some importance, given our history on this troublesome matter. During Vietnam, you recall, the press moved about the war zone with relatively few restrictions. The result is that it saw, and reported, many situations that helped turn Americans against the war. But it was not what was happening in Vietnam that angered our government, or that led to the souring of Americans on that war. It was the reporting of it. Government, and especially the military, does not want anyone, most especially the press, looking over its shoulder. And so when Grenada came along, the press was kept away for the first few days. The public applauded. The press was unpatriotic. It couldn't be trusted. And then, in a few weeks, people began to realize that they would never know, for sure, what happened in the opening days of that mini-war. They would only know what the government chose to tell them. And they realized that news of conflict needed to come also from non-government sources.

The result—press pools were set up, with certain reporters to be called up when a military action was imminent. And then Panama happened. And the military waited until after the action was started to call up members of the pool, making sure that they could not get there until after it had begun. Never mind that there were plenty of U.S. reporters in Panama who could have been on the scene immediately. That was not allowed. Instead, pool reporters in Washington were alerted, then had to be transported to Panama, and then were detained in compounds until the initial action was over.

In trying to cover the Gulf, reporters were in the custody of "keepers," military escorts who

were present constantly, preventing anyone from talking to reporters without the military listening in. Every word that came out of Saudi Arabia, or Kuwait, or later Iraq, had the imprint of censorship on it. Would the story have been different if that had not been so? Maybe not. But at the very least, reporting would have had a great deal more credibility if it had not been required to submit to security clearance.

No one is suggesting that real national security secrets should be printed or broadcast. No one, in fact, has ever accused the press of doing that, or even wanting to do it. But when American troops are committed to risking their lives, and when other young men and women are waiting to be called to do the same, the American people deserve to know what is happening in that military action.

It is fine to show in our living rooms how smart bombs and precision technology allow weapons of death to find their way precisely to military targets. But war is not clean and painless, even for a nation with weapons such as ours. War is blood, pain, and death. It is starvation, illness, and confusion. The sanitized version that came to America from the Gulf War was not even as real as a Hollywood movie. It was sanitized, and that is not what Americans should see in their news. They should know that when their men and women commit themselves to a cause, there is a price to pay. And they should know what that price is. When our government prohibits the press from letting the public see even the return of closed caskets to this nation, it is keeping our people from seeing the cost of war to themselves. It is deluding, or trying to delude, its citizens.

There are other issues, including whether young people have rights that unquestionably belong to adults. In the last few years, in the wake of the Hazelwood decision we have seen censorship of the high school press increase, and growing efforts to censor the college press. Our panelists this afternoon will discuss this and other issues that show clearly how far from being complete our interpretations of the First Amendment are. There is the matter of obscenity and pornography in art and literature. How much should be censored? And by whom? We all need to pay attention as we, and the law, change. Because it is not just a free press, but a free people that is at stake.

A final few words before we hear from Jane Kirtley and Mark Goodman. Over the years, Americans, in their schools and in their homes, have done too little to help young people understand the obligations and responsibilities of citizens in a democratic society. At some point in our schooling, many of us had a course called "civics." In most places, it only taught us about government, not about our role in it. Today, in most systems, students are rarely taught how to make the critical decisions that the First Amendment, the Bill of Rights, and self-government require. The result is a nation of young people that operates, if you will, on its gut and out of self-interest.

There is little attention given to tolerance, or allowing for differences of opinion, or respecting those who do not agree with us. So today we discuss "politically correct" speech, and "hate" speech. We either do not know or do not care that our freedoms are contingent on permitting the same to everyone else.

Majorities usually do not worry about such things. But as people and nations change, majorities can quickly become minorities, and chances are that the new minority will receive the same treatment when the positions are reversed. Our system's health and vitality depends on our allowing for some disagreement, and some civility toward and respect for those who do not follow the vast numbers. It is important to remember that a strong minority keeps the majority from becoming authoritarian and destroying the very principles that both depend on.

The body of press and First Amendment law that has grown over 200 years is still in its infancy. We have not answered all questions. Probably we never will, because as our society becomes more complex, so do the issues.

Freedom of Religion

by Charles C. Haynes

Exploding religious and ethnic pluralism in the United States confronts our schools and our nations with unprecedented challenges and opportunities. Shouting matches about "values education," "cultural bias in textbooks," secu-

lar humanism," and many other issues involving religion and the schools divide many American communities. Some observers even suggest that we are beginning to see a "tribalization" of the nations.

The group that met to discuss the First Amendment's Religious Liberty clauses at the 10th Annual Jennings Randolph Forum focused on the simple but profound question that runs through the modern experience: **How will we live with our deepest differences in an increasingly pluralistic society?** We looked at the historical roots of religious liberty in America and discusses how the principles of religious liberty, or freedom of conscience, are at the heart of our common compact, providing the civic framework for negotiating our differences in the public sphere.

By teaching and applying First Amendment principles in every classroom, public schools become places for people of all faiths or non, and every lesson becomes a civics lesson. The civic values and responsibilities that flow from the Religious Liberty clauses are so fundamental and enduring that they may be called the "three Rs" of religious liberty: rights, responsibilities, and respect.

Rights

Religious liberty, or freedom of conscience, is a fundamental and inalienable right founded on the inviolable dignity of the person. In our religiously diverse classrooms, it is vital that we stress this rights as a cornerstone of American citizenship. Students of all faiths and world views must have a clear understanding that the rights guaranteed by the Constitution are for citizens of all faiths or none.

Responsibilities

Religious liberty is not only a universal right, but it depends upon a universal responsibility to respect that right for others, treating others as we desire to be treated. Teachers have a mandate to help students of all faiths and cultures to recognize the inseparable link between the preservation of their own constitutional rights and their responsibility as citizens to defend those rights for all others.

Respect

Debate and disagreement among people of different faiths and world views are vital to classroom discussion and a key element of preparation for citizenship in a democracy. Yet, if we are to live with our differences, particularly our religious differences, how we debate, and not only what we debate, is critical. As teachers prepare students to be citizens in a multicultural society, it is crucial that they teach a strong commitment to the civic values and responsibilities that enable people with differing religious and philosophical perspectives to treat one another with respect and civility.

Teaching religious liberty, then, means teaching rights, responsibilities, and respect as the guiding principles that sustain the American experiment of E Pluribus Unum. These core civic values are the ground rules for negotiating our differences in public schools and in the public square. If we keep these principles alive in our classrooms, the challenge of religious pluralism can become an opportunity for enriching our life together. We are, after all, a chartered people, the first nation to be founded not on bloodlines, but on principles. As John Courtney Murray reminded us some years ago: "When the Constitution was being written, it started off, 'We the people.' It did not start off: 'We the tribe.' We are not a tribe, we are a people."

Discussion Questions

1. What kinds of limits can be placed on the freedoms of assembly and petition?

2. Define the "accountability" of a free press.

3. Describe ways in which public school educators could teach the "3Rs" of religious freedom.

Contemporary First Amendment Issues

The following is excerpted with permission from the National Council for the Social Studies publication *Social Education*, September 1990, pages 278–286. It summarizes the luncheon address delivered by Os Guinness.

Tribespeople, Idiots, or Citizens? Religious Liberty and the Reforging of the American Public Philosophy

. . .[N]o part of the American experiment stands out more clearly yet is less appreciated or copied as a key to modern troubles than the Religious Liberty clauses of the First Amendment. For in the tensions and challenges now surrounding the clauses are some of the deepest and most significant issues of our time. Above all, there is the simple but vital question: **How do we, in an age of expanding worldwise pluralism, live with our deepest — that is, our religiously and ideologically intense — differences? In short, what is the relationship today of religious liberty and American democracy?**

Religion and American Public Life Today

[I make] four judgements about the relationship of religion and American public life today: first, that a period of recurring conflict (ever since the Everson case in 1947, but most notably between 1979 when the Moral Majority was founded and 1989 when it closed its doors) has left the nation with the urgent need to clarify the role of religion in public life; second, that this clarification is vitally significant not only for the American republic but as a foundational ordering principle of the new Pax moderna; third, that the best way to clarify this relationship lies in reaffirming the place of religious liberty in the American public philosophy in accord with the notion of covenantalism, or chartered pluralism that is outlined here; and fourth, that the present situation confronts Americans directly with a three-fold choice first stated by supporters of democracy in Greece and restated by John Courtney Murry (1962) in the early sixties.

The choice is as follows: **As the issues of religion and public life continue to arise, will Americans respond as "tribespeople" in the sense of those who seek security in a form of tribal solidarity and are intolerant of everything alien to themselves (a problem that is often an over-development of communitarianism)? Or as "idiots" in the original Greek sense of the totally private person who does not subscribe to the public philosophy and is oblivious to the importance of "civility" (a problem that is often an over-development of libertarianism)? Or as "citizens" in the sense of those who recognize their membership in a "commonwealth" and who appreciate the knowledge and skills that underlie the public life of a civilized community?**

A Common Vision for the Common Good

. . . **[W]hat is meant by the public philosophy, or common vision of the common good?** [O]ur concern here is the narrow one of the place of religious liberty in the public philosophy. . . . One of America's greatest achievements and special needs has been to create, out of the mosaic of religious and cultural differences, a common vision for the common good—in the sense of a widely shared, almost universal, agreement on what accords with the common ideals and interests of America and Americans.

. . . This common vision has served a vital purpose—it has offset the natural conflict of interests in a pluralistic society. . . . It has been the binding that maintains unity to balance the richness and pressures of diversity, and transmits a living heritage to balance the dynamism of progress . . . . For Americans, consensus has always been a matter of compact over common ideals as well as compromise over competing interests.

. . . Consensual agreements over the place of religious liberty in public life are only one component of the wider public philosophy, but a vital one . . . . Because of the personal importance of faiths to individuals and to communities of faith in America, and the public importance of both to American national life, a common vision of religious liberty in the public life is critical to both citizens and the nation. It directly affects personal and community liberty, civic vitality, and social harmony. Far from lessening the need for a public philosophy today, ex-

panding pluralism increases it. Indeed, for anyone who has reflected on the last generation of conflict over religion and public life, few questions in America are more urgent than a fresh agreement on how we are to deal with each others' deepest differences in the public sphere.

Religious Liberty and Public Philosophy

There are at least five reasons why religious liberty remains a vital part of the public philosophy. First, religious liberty, or freedom of conscience, is a precious, fundamental and inalienable human right — the freedom to reach, hold, freely exercise or change one's beliefs independent of government control.

. . . Second, the Religious Liberty clauses of the First Amendment are the democratic world's most distinctive answer to one of the entire world's most pressing questions: How do we live with our deepest — that is, our religiously intense — differences?

. . .American democracy has afforded the fullest opportunity for strong religious commitment and strong political civility to complement, rather than threaten, each other.

Unless the public philosophy respects and protects this distinctive American achievement, the American promise of democratic liberty and justice will be betrayed.

Third, . . . the First Amendment's ordering of the relationship of religion and public life is the boldest and most successful part of the entire American experiment. Daring in its time, distinctive throughout the world both then and now, it has proved decisive in shaping key aspects of the American story. It is not too much even to say that as the Religious Liberty clauses go, so goes America.

. . . Fourth, the Religious Liberty clauses are the single, strongest, non-theological reason why free speech and the free exercise of religion have been closely related and why religion in general has persisted more strongly in the United States than in any other comparable modern country. In most modern countries, there appears to be an almost ironclad equation: the more modernized the country, the more secularized the people. America, however, is a striking exception to the trend, being at once the most modernized country and having the most religious of modern peoples.

Os Guinness addresses Forum participants at the Thursday luncheon sponsored by the ***Kettering Foundation.***

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The reason lies in the effect of the American style of disestablishment. By separating church and state, but not religion from government or public life, disestablishment does two things: it undercuts the forces of cultural antipathy built up against religious communities by church-state establishments—historically speaking, established churches have contributed strongly to their own rejection and to secularization in general. At the same time, disestablishment throws each faith onto reliance on its own claimed resources. The overall effect is to release a free and unfettered competition of people and beliefs similar to the free market competition of capitalism.

Unless the public philosophy respects and protects this enterprising relationship, both American religious liberty and public discourse will be handicapped.

Fifth, the interpretation and application of the First Amendment today touches on some of the deepest and most revolutionary developments in contemporary thought . . . . To demand "neutral discourse" in public life, as some still do, should now be recognized as a way of coercing people to speak publicly in someone else's language and thus never to be true to their own.

Unless the public philosophy respects and protects this new (or restored) understanding, the republican requirement of free democratic debate and responsible participation in democratic life will be thwarted.

Changes, Challenges, and Controversies

. . . [T]he crisis of cultural authority contributes to the conflicts over religion and public life and depends in part on their resolution for its own resolution.

. . . "Church and State" has become a thought-numbing category that misleads as much as it illuminates . . . . [T]he framers' more common terms were religion and government, not church and state. But not only have religion and government each changed over the course of 200 years under the impact of modernity, the relationship between them has also changed to the point of being a complete "exchange of roles."

. . . The Williamsburg Charter (1988) states: "Less dramatic but also lethal to freedom and the chief menace to religious liberty today is the expanding power of government control over personal behavior and the institutions of society, when the government acts not so much in deliberate hostility to, but in reckless disregard of, communal belief and personal conscience."

The Expansion of Pluralism

. . . **How do we live with each other's deepest differences?** . . . [T]he all too common response has been bigotry, fanaticism, terrorism, and state repression.

. . . The United States has shifted from a largely Protestant pluralism to a genuine multi-faith pluralism that includes people of all faiths and those who claim no religious preference . . . .

We can also see the effect of the exploding diversity in what is a form of cultural breakdown—collapse of the previously accepted understanding of the relationship of religion and public life and the triggering of the culture wars. As a result, a series of bitter, fruitless contentions over religion and politics has erupted, extremes have surfaced, the resort to law court has become almost reflexive, many who decry the problems are equally opposed to solutions to them, and in the ensuing din of charge and countercharge any sense of common vision for the common good has been drowned.

Consequences of Increased Pluralism in the World

. . . [I]ncreased pluralism deepens old tensions.

. . . On the other hand, increased pluralism helps develop new trends. Today's dominant tensions are often . . . between the more orthodox and the more contemporary within the same denomination . . . .

. . . If religious liberty makes pluralism more likely, pluralism makes religious liberty more necessary.

. . . [T]hese developments and their logic have hit hard the trio of American institutions that have been so instrumental in tempering the forces of faction and self-interest and helping transform American diversity into a source of richness and strength: the Religious Liberty

clauses of the First Amendment, the public school movement, and the American public philosophy. ...[T]he public schools have often been the storm center for the controversies, one or another of the twin clauses of the First Amendment have been looked to as the sole arbiter in the partisan conflicts, and the common vision for the common good becomes the loser.

Charter for the Third Century

. . . [C]an there be a healing of the schism of the spirit, a resolution to the culture wars and an adjustment to the new pluralism without endangering the logic of religious liberty in public life? Can there be an agreed center of national unity that complements, rather than contradicts, American diversity? Is there a way in which diverse faiths can fulfill their respective responsibility to the requirements of order, freedom, and justice without favoring one of the three at the expense of the other two?

. . . Where and on what grounds could consensus emerge?

. . .[T]he most constructive way is to reforge the public philosophy through the renewal of a concept which is at the heart of American democracy and the American constitutional tradition—covenantalism.

. . . [T]he American Constitution and the constitutional tradition grew directly from the seedbed of Puritan ideals and institutions that were rooted in the notion of covenant.

Federal Liberty

. . . The foundational covenant was the one between God and human beings, but there were multiple extensions to different levels of community—the covenant of marriage, the local church, the town, the colony and eventually the nation.

. . . The covenant/compact/charter represents a distinctive combination of unity and diversity, commonality and independence, obligation and voluntary consent.

Chartered Pluralism

This idea of covenantal, or federal, liberty holds the promise of a resolution to our present problems through the concept of chartered pluralism . . . . [A] significant, though limited, agreement is still possible at the level of the *outworking* of beliefs (where the expression of beliefs in behavior is more practical, less ultimate and often overlapping with the practical beliefs and behavior of other people).

Chartered pluralism is therefore a vision of religious liberty in public life that, across the deep religious differences of a pluralistic society, guarantees and sustains religious liberty for all by forging a substantive agreement, or freely chosen compact, over three things that are the "three Rs" of religious liberty: rights, responsibilities, and respect. The compact affirms: first, in terms of rights, that religious liberty, or freedom of conscience, is a fundamental and inalienable right for peoples of all faiths and none; second, in terms of responsibilities, that religious liberty is a universal right joined to a universal duty to respect that right for others; and third, in terms of respect, that the first principles of religious liberty, combined with the lesson of two hundred years of constitutional experience, require and shape certain practical guidelines by which a robust yet civil discourse may be sustained in a free society that would remain free.

. . . The pact does not pretend to include agreement over religious beliefs, political policies, constitutional interpretations, or even the philosophical justifications of the three parts of the compact.

. . . [C]hartered pluralism . . . grows . . . from a common commitment to universal rights, rights that are shared by an overlapping consensus of commitment although grounded and justified differently by the different faiths behind them.

. . . [T]he achievement of this compact . . . comes through the process of a particular concentration of universal rights and mutual responsibilities, within which the deep differences of belief can be negotiated.

. . . [M]oral consensus must be viewed as a goal, not as a given; something to be achieved through persuasion and ongoing conversation rather than assumed on the basis of tradition. Thus chartered pluralism means that there is a way to give positive meaning to public life without coercive imposition, and at the same time to foster an emphasis on freedom and

diversity that need not lead toward fragmentation.

. . . [T]he health of the public philosophy depends not only on a public conversation of citizens across the divisions of creed and generation, but on the private cultivation of the first principles of the public philosophy within each home and faith community.

. . . [C]hartered pluralism allows . . . "radically monotheist" religions . . . to balance the twin demands of theological integrity and civil unity . . . . Chartered pluralism therefore allows them to exercise their responsibilities to their conceptions of order, freedom and justice, yet without infringing on the rights of others or becoming socially disruptive.

. . . Do all the different faiths mean the same thing when they affirm common rights? Do all have an adequate philosophical basis for their individual affirmations? Are all such divergences and inadequacies a matter of sheer indifference to the strength and endurance of the compact? Will such a principled pact always be enough in practice, to keep self-interest from breaking out of the harness? The probable answer in each case is *no*, which is a reminder of both the fragility of the historical achievement of religious liberty for all and the sobering task we all face if we will sustain such freedom today.

Discussion Questions

1. Define "Common vision for the Common Good."

2. Why will religious liberty remain at the core of public philosophy?

3. What are the implications of increased pluralism in the world?

4. Define chartered pluralism. Defend its validity as an answer to problems of cultural differences.

History, Philosophy, and Contemporary Issues of the Bill of Rights

Summaries of Break-out Sessions

Moderator—Helena Hodges: Our first principles are remarkable in their pragmatic nature. These proceedings have promoted and modeled our notions of citizenship. Our first liberties are assured regardless of background and represent a core philosophy of a common vision for the common good. Our first principles are promoted through education, politics and effective policies. Education is the key to teach how to live and apply our common compact equitably as we grow into a global and diverse society.

Freedom of Assembly—John Patrick: In our session we touched on the other freedoms as well. Our historical roots discussion focused on state constitutions of the virgin states. Several specifically included the rights to petition and assembly. The Pennsylvania Constitution included freedom of speech, freedom of the press, and provided for freedom of expression by legislators. The English Bill of Rights also included freedom of petition and assembly. While this heritage is important, our colonial heritage is important. So we focused on states' declaration of rights.

We then turned to the meaning of rights in society. We noted the great importance of an independent judiciary and judicial review in making certain these rights are applied equally in society. The Bill of Rights can only be a glorious declaration of standards and values, can only be meaningful if it can be operable in peoples' lives. The apparatus of government can make it operable. We need to teach the role of the citizen in this process, so that independent review of the judiciary can function in the apparatus of government. We need effective citizenship education for this to happen. The role of people acting on their rights is critical. The majority rule/minority rights paradox remains a problem. The right of petition and assembly can be a mechanism to help lawmakers determine what the majority is, so lawmakers will be accountable to the majority. Also, the rights of individuals must be protected. Historically, there are many illustrations of these issues, i.e. the Skokie Case. The American Nazi Party created a new manifestation of

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these issues—protecting the sensitivities of those harmed by freedom of expression. The Universal Declaration of Human Rights included a more positive casting of rights than have traditionally been negatively cast in many documents. The Universal Declaration, in casting rights both ways, creates conflicts between certain rights and forces examination of which rights are more fundamental. The majority/minority rights question was handled by Justice Brandeis, who defined an emergency situation in placing limits on the right of free expression of the individual vs. the common good.

Freedom of Religion—Charles Haynes: We began our discussion with the Three R's of religious liberty—rights, responsibilities, and respect. They provide a civic framework for living together and the ground rules for living together in the public square. Historically, colonial society had pluralism too. Colonial American was an experiment in diversity and still found a common compact. Colonists looked to the history of natural rights, as well as the philosophies of Roger Williams, Locke, Madison, Jefferson, and the Baptist tradition. Freedom of conscience was a God-given right which the state protected. Through Madison's influence, the Virginia Declaration of Rights stressed "toleration." Another influential Virginian, George Mason, suggested more than toleration—that we were responsible for the rights of all others. Rights are best protected when the rights of all others are protected. The respect inherent in religious liberty means to provide for the needs of and accommodate the requests of others. These Three R's can help all to understand the requirements of citizenship. We expect new arrivals to understand their obligations, but we need to include as many as possible in the broad civic framework and facilitate participation and good citizenship of diverse groups in the public square. The application or discussion of specific cases test our ability to apply first principles admidst diversity and conflicting interest and forces examination of solution. Madison's convictions on religious freedom as an inalienable right remain.

Freedom of Speech—Warlene Gary: We began by talking about the values of freedom of speech, and determined 1) speech is part of humanity and permits communication, 2) the right to speech is important, 3) speech defines our individuality, 4) speech contributes to the discovery of truth, 5) speech helps maintain democracy, and 6) speech brings about peaceful social change. We then compared the value of freedom of speech in the 18th century with today's values of free speech. Then there were some limits on freedom of speech; today, community standards influence what constitutes free speech, in some cases. Much of our discussion focused on applying prevailing standards of free speech to the campus and school environments and the subsequent conflicts which arise. Free speech comes with responsibility. Our growing cultural diversity will create more problems regarding this first principle. We must move beyond mere discussion to sound resolutions of free speech issues based on our common compact.

Freedom of the Press—Jean Otto: Our group concluded that a Free Press doesn't exist for itself, it is a citizen's right. It is also an impediment imposed on government that tell government what it may not do. It is tied irrevocably to all other parts of the First Amendment because the right to think something in isolation has very little credibility until one can articulate or speak that idea or share it with other people to test it validity against other ideas. The element of Free Press helps share ideas, information, premises with others. It also serves as an enabling Amendment for all other parts of the Bill of Rights. It allows government to be held accountable to the people. It allow us to see whether the Eight Amendment is true and upheld, along with the Fourth Amendment. It serves a reporting function. We decided there was some protection in the Bill of Rights both for irresponsible speech and irresponsible journalism. Justice Hugo Black said, "No law means no law." The Founders didn't stipulate accurate speech or a responsible press. They just said Congress shall make no law curtailing freedom of the press. It poses some difficulties. We would all like to see a more accurate and responsible press; yet, it is difficult to say who would make it so and hold it accountable. It's a messy part of democracy. We swallow some things we don't like for the larger principle we're seeking.

The press and the public and government have an uneasy alliance. The public is the ultimate holder to accountability of the press. It can chose to not buy a paper, not tune in a broadcast, to force a press that doesn't serve the public, to hit where it hurts. Credibility of the

press is tested every day.

However, the climate is changing. The Supreme Court cases demonstrate. The Court is taking on matter of ethics rather than law. Mason vs. the *New Yorker* case involved fabricating quotes on paraphrased material. The issue of confidentiality appeared in Minnesota. The press is learning how to cope with these changes. Naming the alleged victim in the Florida rape case is a question of ethics. The press is on a learning curve. It is not sure of ethical standards. The Court and the Public need to remember that journalism, as performed by professionals with varying degrees of ability, is not an exact science like saw or medicine, but more subjectively an art or craft. The Framers might see the current Court's desire to hold the press accountable to rigid standards as interfering with a free press. The Framers knew the chaos generated by a truly free press. The press doesn't know at this point where to go. It will learn with the public and the Supreme Court. Ultimately, new standards may evolve. Whatever chaos and conflict is involved, what disappointing and inaccurate reporting occurs, we decided we must support a free press because it is the hallmark of a free society. We see this in newly emerging democracies, whose first goal is usually a free press.

We also discussed the student press. The Hazelwood decision resolved that if a student newspaper is a classroom exercise, school supervisors may determine what is printed. There is wide agreement that students can't be expected to be denied decision making ability and suddenly acquire the skills to make responsible decisions suddenly at age 18. Students must learn and acquire these skills during the education process. Censorship is not a recourse to teach responsibility.

We put up with all the flaws inherent in supporting a free press because it is on of the first principles that truly does serve the common good.

Tribute to Senator Jennings Randolph

Congratulations on your long and successful career in public service. You are an inspiration to those who serve the people, especially those of us in the Senate.

One of your most important contributions to our nation was the lowering of the voting age to 18. It was through your hard work and persistence that this amendment was adopted.

I am also pleased to recognize the tenth anniversary of the **Council for the Advancement of Citizenship**. At a time when the spirit of democracy and the dream of freedom and opportunity are becoming common aspiration of all people on this planet, this organization and your vision serve to keep this spirit alive for all Americans.

—Sam Nunn, United States Senator

Liz and I send along our great greetings and love on this the twentieth anniversary of the twenty-sixth amendment. YOUR amendment. We count it blessed to have had you here in the Congress for so very long.

—Daniel P. Moynihan, United States Senator

It is hard to believe that two decades have passed since Congress passed the 26th Amendment, granting the right to vote to our eighteen to twenty year-olds. A great deal of history has been made since then, and because of the 26th Amendment, our nation's young people have had an important voice in that history.

At the time, the 26th Amendment played an important role in bringing together a nation that had been torn by war, the struggle for equality, and political assassinations.

You were more than just the author of this Amendment. For thirty years, you were the heart and soul of the effort to secure it's ratification. As a result, this important addition of our Constitution will remain a permanent legacy to your efforts.

At the same time, however, your entire career has been a legacy to the concept of public service. Both in the House of Representatives and in the Senate, you worked tirelessly for more than a half-century for the people of West Virginia and for the principles embodied in our American heritage. The United State will long reap the benefits of your service.

—Joseph R. Biden, United States Senate

Mike Baly, John Buchanan, and Diane Eisenberg read letters at Forum Tribute to Jennings Randolph

Senator Randolph is legend in the Senate. His love for the people of West Virginia and his tireless advoCACy on their behalf will always serve as a shining example of the way things should be done in the United States Senate. Jennings is a special and beloved friend and gentle advisor to me and to so many others. He has always "walked the walk," rather than just "talking the talk." He possesses an uncommon degree of common sense. He is one of those people who is known far and wide for his keen intellect, the genuine friendship he extends to others, and for just being a very special person in our lives.

—Al Simpson, United States Senator

I would like to offer my congratulations on the 20th anniversary of passage of the 26th Amendment to the U.S. Constitution. Few members can boast the achievements that you managed in your more than forty years of service in the Congress.

The passage of the 26th Amendment is truly a milestone in our great democracy. The fullest notion of universal suffrage was realized on the momentous passage of the 26th Amendment, and your thirty years of patience and political tenacity certainly paid off.

Your legacy is not one easily forgotten or displaced. This event to recognize and commemorate your dedication and service to the country is well-deserved.

—William S. Cohen, United States Senator

If we were going to look for terms that best describe Jennings Randolph, the terms "Pioneer, Humanitarian, Storyteller, Historian, Educator," come immediately to my mind. His achievements are too many to mention, not only through legislation that served West Virginia, but served a whole nation. He was tireless in his efforts toward bettering the lives of all people, believing that each and every one has a right to a life of quality and dignity within their respective communities.

—Nick J. Rahall, II, Member of Congress

Certainly no better organization than the CAC can thank you for your over forty years of service to West Virginia and the nation in both the House of Representatives and the Senate.

As your colleague for nearly five years, I recall a dedicated public servant, a skilled legislator, and, above all, a gentleman. Please accept my heartiest congratulations on the occasion of the Jennings Randolph Forum.

—Arlen Specter, United States Senate

Throughout our history, Americans have advanced the principle that democracy grows close to home and among the people. In this century, we have seen that ideal pass from one nation to another. Those Americans, like yourself, who worked to make democracy stronger here at home, helped set an example to those who yearned and fought for democracy abroad.

—William V. Roth, Jr., United States Senate

Peace Child Foundation—"City at Peace"

Educating for our Common Compact

The following is a complete version of Friday's opening remarks delivered by **R. Freeman Butts.**

Just two weeks ago, President Bush announced that a decade of educational reform had ended and an educational revolution has begun. The time for issuing reports, making studies, and convening panels is past. The status quo is upended. It is time to transform America's schools. In Chester Finn's even more colorful and emphatic words: "American education is dead in the water." We must cast aside everything we've thought about education in the past, erase everything, start from scratch, and invent.

If the commentary on TV talk shows and in the press since the announcement of *America 2000* is any barometer, the debate over the impending revolution is by no means over. In fact, as we commemorate the Bicentennial years of the founding of the Republic, the question may well be raised: **Will this revolution lead to the framing of a new constitution for American society as well as for American education? And, if so, will this revolution strengthen or will it weaken the principles and values of our 200-year-old Constitution and Bill of Rights?**

The President's announcement is the culmination of the education summit he held with the fifty governors in Charlottesville in October 1989. They spoke of their work as a "Jeffersonian Compact". **In a short piece written for the Council for the Advancement of Citizenship shortly after that event, I agreed that the education summit was historic, but that something crucial was missing: Where was Jefferson? Where was his belief that the primary goal of American education was good citizenship?** Subsequently and by the efforts of John Buchanan and **CAC**, the final Governors' report on national goals for American education did make several generalized references to the importance of education for citizenship. But the six goals themselves give little explicit attention to the knowledge, skills, or values required for the practice of good citizenship.

This morning's sessions on "Educating for Our Common Compact" are devoted to "Putting the Bill of Rights into Practice" and "Sustaining our Common Compact: What Next?" Let me make four propositions that I hope you will keep in mind in your discussion groups:

1. The primary purpose of universal, free, common, and compulsory schooling in the United States, whether in public or in private schools, is education for citizenship, i.e., developing in all students the virtues, sentiments, knowledge, and skills required for exercising the rights and the responsibilities of citizenship in the American constitutional order.

2. Paramount to this general civic purpose is education that will develop in all students a commitment to the fundamental principles and values of the Constitution and the Bill of Rights, and an understanding of the issues and controversies arising in their history and in their contemporary practice.

3. These propositions are all but missing in a decade of proposals for educational reform. With only a few exceptions, the most visible proposals of the educational reform movement during the past decade have seldom recognized these two propositions about the fundamental relationship between education and American citizenship.

Most disappointing of all, the recent announcement of *America 2000* by President Bush at the White House was no exception. I wrote my paper for this morning on the basis of the President's speech and subsequent discussions in the press and the TV talk shows. But yesterday, through the efforts of Chuck Tampio and Mary Jane Turner of the **Close-Up Foundation**, I was able to read the 34 page document introduced by Secretary Lamar Alexander, entitled *America 2000: An Education Strategy.*

No reference is made to the goal of education for citizenship (my propositions #1 and #2) except where the Governors' National Goal #3 on Student Achievement is quoted:

> American students will leave grades four, eight, and twelve having demonstrated competency in challenging subject matter including English, mathematics, science, history, and geography; and every school in America will ensure that all students

> learn to use their minds well, so that they may be prepared for responsible citizenship, further learning, and productive employment in our modern economy (p. 9).

The document itself does not attempt to give meaning to the phrase "responsible citizenship," nor do the core studies imply specific study of civics, government, social studies, or social sciences. Surely, the study of history may well include the Constitution and the Bill of Rights whose Bicentennial we are now commemorating throughout this year. **History is a necessary ingredient of preparation for citizenship, but is it sufficient?**

And, still more troubling for the future of public education was the question and answer paragraph on page 31:

> Q. Will choice apply to private schools as well as public? Will it apply to religiously affiliated schools?
> A. It will apply to all schools except where the courts find a constitutional bar. The power of choice is in the parents' leverage both to change schools and to make change in the schools. The definition of "public school" should be broadened to mean any school that serves the public and is held accountable by a public authority.

The reference here to "a constitutional bar" sounds the alert that citizens as well as the courts need to be aware of and knowledgeable about public policies and issues that affect their rights and responsibilities.

4. Our discussion this morning and the subsequent efforts of the member organizations of CAC should be mobilized to the end that education for citizenship in general and education for our Common Compact in particular be put on the front burner of American education in the decade of the 1990s, whether we move by incremental reform or fundamental transformation.

I won't try to deal this morning with my propositions #1 or #2, fundamental as they are. I have dealt with them elsewhere in some detail. I have time only to remind you of some aspects of the present political and educational context of educational reform towards which I hope your efforts today and in the future will be directed.

Events have caught up with the topic of this Randolph Forum, far exceeding our original expectations when it was first planned. We meet at, dare I say, a "defining moment". Our Forum was not precipitously thrown together to meet the urgencies of a post-war period or a new initiative from the White House. But it does convene at a critical stage in our domestic educational reform movement as well as at a time of craving to learn about democracy billowing up from many regions of the world, in Eastern Europe, the Soviet Union, Africa, the Americas, and perhaps even in the Middle East.

A word about both movements. Education has risen to the top of everyone's stated list of domestic political priorities, Republican and Democratic, liberal and conservative, federal, state, and local. At the same time, the decade-long educational reform movement has begun to focus on the curriculum content that should commonly be taught in all American schools, succinctly summarized in the phrase "what all students need to know and be able to do."We are well aware of recent efforts that have been made to formulate national standards of achievement in the various subject matter fields: mathematics, science, geography, English, history, economics, and the social studies.

And now we find that we meet at a particularly timely and urgent period of educational reform, when the combined efforts of the President and the 50 state governors are being exerted to formulate and implement national goals for American education. While the President's staff and the governors were working out their six goals over the past year and a half since the "Jeffersonian compact" at the education summit at Charlottesville, little mention was being made of citizenship. But, happily, the **Council for the Advancement of Citizenship** was instrumental in getting citizenship education mentioned several times in the final document. The introductory statement on national education goals adopted by the National Governors' Association in March 1990 says it well:

> If the United States is to maintain a strong and responsible democracy and a prosperous and growing economy into the next century, it must be prepared to address and respond to major challenges at home and in the world. A well-educated

> population is the key to our future. Americans must be prepared to: . . .
> Participate knowledgeably in our democracy and our democratic institutions; and function effectively in increasingly diverse communities and states and in a rapidly shrinking world. . . .
> Today a new standard of an educated citizenry is required, one suitable for the next century. . .(All students) must understand and accept the responsibilities and obligations of citizenship.

These are unexceptional statements. They pay tribute to the importance of education for citizenship as a goal, but, like so many curriculum guides and frameworks, they pay little specific attention to it when they spell out the means to reach the goal.

For example, the NGA statement on Goal III, Student Achievement, says that all students should be "prepared for responsible citizenship," but the only subjects it mentions are English, mathematics, science, history, and geography. It does not mention civics, government, or social studies even though such subjects are widely taught and required throughout the country, and vast numbers of teachers believe such courses are as fundamental to civic education as are history and geography, if not more so.

With the President's campaign for *America 2000*, public debate reached a peak about the desirability of setting national standards and devising national tests to assess student achievement toward such standards. The suggestion by some educators and members of the public who are proposing a national curriculum of minimum essentials goes against the grain of many professionals. Nevertheless, several potentially influential political bodies have recently advocated national standards and national tests.

On January 17, 1991, the President's Advisory Committee on Education Policy, chaired by Paul H. O'Neill, CEO of the Aluminum Company of America, met with President Bush. They proposed the creation of high national standards in English, mathematics, science, history, geography, reasoning, and problem-solving skills. These standards would be accompanied by the development of national tests to measure student performance on the skills and knowledge of these subjects at various grade levels beginning at age 9. Again, there was no mention of citizenship, civics, government, or social studies.

In the last week of January 1991, a new group called Education America, founded by Saul Cooperman, former New Jersey State Commissioner of Education, and chaired by former New Jersey governor, Thomas H. Kean, proposed mandatory national tests for all 12th graders in public and private schools with results to be made available to students, parents, employers, and post-secondary institutions. These tests would be designed to gauge the performance of every student, school, school district, and state against the national goals for student performance in six subjects: reading, writing, mathematics, American and world history, science, and geography. The results of the test would be scored on a five point scale from "not competent" to "distinction." Once again, no mention was made of civics, government, or social studies as subjects for testing.

More significant in the long run will be the work of the National Goals Panel of the National Governors' Association, chaired by Governor Roy Romer of Colorado. The Panel organized six working resource groups to advise the Panel concerning what standards of educational achievement should be set up to attain the goals and what kinds of assessment should be drawn up to measure student achievement.

The group on Student Achievement, chaired by Lauren Resnick, director of the Learning Research and Development Center at the University of Pittsburgh, looked favorably on a "national measurement system" that does not simply monitor but that actively motivates the academic achievement of students, including comparisons at district, state, national, and international levels. Such tests would be based on national and international curriculum frameworks of sufficiently detailed content that students and teachers alike can understand what they are aiming for.

The argument is that this does not mean a national curriculum or a single national test in each subject, but it is deemed possible to create a number of national "anchor tests" devised at a high level of standards, yet still retaining flexibility. These anchor tests would result from a process in which a number of states would pool

their efforts, so that instead of having 50 state tests of achievement there would be only four to eight clusters of examinations produced by the joint efforts of cooperating states. The states would retain the authority for examining and certifying achievement, thus reducing the danger of national uniformity imposed by federal control of education.

In January, the general consensus of the Govenors' Panel on Achievement seemed to be:

- Should we have national goals for American education? Yes.
- Should we have national standards? Yes.
- Should we set national levels of achievement? Yes.
- Should we have a uniform national curriculum? No.
- Should we have a single national test? No.
- Should curriculums be developed at the local level using national goals and standards as guidelines? Yes.

By the end of April, Lamar Alexander had taken charge of the Department of Education and issued his platform for the reform of American education, incorporating much of the National Governors' agenda, plus elements of his own and President Bush's agenda. And the same five "core subjects" to be tested, now voluntarily, at grades 4, 8, and 12 remain as before: English, mathematics, science, history, and geography. No mention of civics, government, or social studies. Indeed, I heard no mention in the President's speech of citizenship as a goal of American schooling. It was also not wholly clear at first that parental choice was to include private and parochial schools. It became explicitly clear with the issuance of *America 2000*.

As I watched and listened throughout the day and evening of April 18, I was reminded of a national conference of the Education Commission of the States I attended six years ago in Philadelphia, July 1985. I wrote in a letter shortly afterwards, "One of the more interesting sessions was one devoted to "alternatives" and headed by Governor Lamar Alexander with responses by Denis Doyle, Charles O'Malley, and Charles Reed, all of whom seemed most supportive of Alexander and blandly skirted issues of public support for private education."

I gave a short paper at that same conference entitled "Lessons from History regarding Education for Citizenship." In it I referred to Secretary Bennett's recent call for American education to stress three C's: Character, Content, and Choice. With tongue in cheek, I said that I had been proposing for some time more attention to another three C's: Civism, *Civitas*, and Civility as primary goals of American universal education. At the conclusion of his speech, Secretary Bennett remarked to me in passing, "All right, let's add Constitution and Common Sense."

So far, I have not heard much of anything about my three C's in *America 2000*. So if I may sum up President Bush's and Secretary Alexander's revolution in terms of three C's, it seems to comprise: Competition, Choice, and 'Countability. Market competition among schools will enhance excellence at home and will improve market competitiveness with nations abroad. Choice will explicitly include public support to enable parents to send their children to private and religious schools as well as to public schools. And 'Countability will not only hold teachers and schools accountable for the achievement of their students but will reward them for how well their students do on national tests in core subjects. So Bennett's C for Choice is still present, and his C for Content remains strong in accountability, but what happened to Character? It has been replaced by Competition. And still lacking are my three C's, which I now revise for today's session: Citizenship for our Common Compact.

I'm quite serious, however. I raise with you these questions: **If we are to move significantly toward national education standards and if some kind of national assessment is to be devised and applied, what should be the place, if any, for the subjects of civics, government, or social studies in addition to history and geography? Or, conversely, can history and geography be so shaped as to do justice to the primary goals of education for citizenship? Can they provide the range of knowledge of the Constitution and the Bill of Rights, the skills of active participation, and the commitments to civic virtue required for a democratic America in the world of 2000? And, in either case, is citizenship a proper goal for any kind of national assessment? If so, what kind? If not, why not?**

Significantly, a number of influential profes-

sional educators have also been active in calling for national standards that stimulate achievement but do not infringe on the local autonomy of schools and teachers. For example, Marshall Smith, dean of the School of Education at Stanford University, argues that we must "think nationally." He has proposed that America needs not a national test but a widely accepted set of national curriculum goals, whose major themes are spelled out in depth and specificity, but which allow maximum flexibility for local districts and local teachers to choose among the topics or issues they will deal with.

In Dean Smith's words,

> In this country, a national curriculum would have to balance national direction with local discretion. . . .To create a national curriculum that is worth having would require the invention of new curriculum frameworks, the production of new and more thoughtful books and materials, the creation of a new assessment system (organized around examinations rather than standardized tests), and new approaches to both teacher education and teacher assessment—all linked together and based on the same frameworks.

This is precisely what *Civitas*, for example, has sought to do for the concepts, knowledge, and values inherent in citizenship and in the subjects most germane to civic education.

However, most professional educators, from classroom teachers to administrators, have historically been opposed to national curriculums and national tests. On April 3 a coalition of 50 educational and civil rights groups urged President Bush and the Congress to oppose the "stampede to national tests." But the subject is less taboo than it once was. Albert Shanker, president of the American Federation of Teachers, and other influentials, have begun to think positive thoughts about national assessment.

Even the American Association of School Administrators, which has historically been against national standards and national tests, reconsidered the question at its annual convention in early 1991. Bruce Hunter, Associate Executive Director, stated, "The idea of a single national test of 40 million schoolchildren was rejected outright. But that we needed a national agreement on what children ought to know—that there should be some national dialogue on standards—there didn't seem to be any objection to that."

In contrast to proposals for national goals, national standards, and national tests, other aspects of the recent educational reform movement have emphasized the need for restructuring schools, stressing the values of local school site-management, shared decision-making, and autonomous curriculum-building by teachers, administrators, and parents. Some of the widely heralded examples on these themes are: the Coalition of Essential Schools, organized by Theodore R. Sizer of Brown University (who speaks very favorably of *America 2000*); the Paideia Program instituted in 1982 by Mortimer Adler of the Institute for Philosophical Research in Chicago; the "effective schools" movement typified by the massive studies undertaken by John Goodlad of the University of Washington; and the viewpoints of the Educational Excellence Network, organized and headed by Diane Ravitch of Teachers College, Columbia University, and Chester E. Finn, Jr. of Vanderbilt University, both of whom loom large in Secretary Alexander's plans. Generally speaking, the devotees of local, decentralized, or unregulated approaches to educational reform do not make much of the importance of our common compact or the Bill of Rights.

Meanwhile, several cities and states are instituting various forms of parental choice whereby parents may choose the public school they wish their children to attend, or whereby public funds in the form of vouchers or tax credits may be used by parents to send their children to private or religious schools or teach them at home. These proposals are always very controversial, themselves raising issues involving the Bill of Rights, the separation of church and state, equal protection of the laws, and other public policy questions concerning the role of public and private schooling in American society.

The politically volatile issue of choice has constantly been promoted by the Reagan and Bush administrations. President Bush reaffirmed the idea in his budget message, in his State of the Union address in January 1991, in his speech to Congress declaring victory in the Persian Gulf War, and in his speech heralding *America 2000*.

Lamar Alexander in his February 6 confirmation hearings and in his first major proclamations since becoming Secretary of Education, has repeated his long held position in favor of choice. It is now embedded in *America 2000*.

My point is this: The more headway choice makes, the more important it is that the core of our common compact be a common core of study in private as well as in public schools. Indeed, advocates of the Bill of Rights may well question what kind of choice and the extent to which choice itself is suitable under the Constitution and the Bill of Rights.

Finally, we need to view our study of the Bill of Rights in the perspective of renewed efforts to reform the role of education for citizenship in the democratic movements of Eastern European nations and of the republics of the Soviet Union, as well as those in Africa and Latin America. Several important initiatives are under way to respond to requests of governments and educators from other lands who are interested in developing their own programs of civic education for democracy. Among these are the AFT and the Excellence Network's Project for Democracy/International as well as programs of the Department of Education, the Peace Institute, Peace Corps, USAID, USIA, and the National Endowment for Democracy. We certainly need to consider ways in which study of the American Constitution and Bill of Rights can be an aid to other countries as they seek to devise their own education for the values and the hazards of democratic citizenship.

With the stunning conclusion of the Persian Gulf War, attention returns to the role of schools in developing civic responsibility and civic participation in the United States itself, but now in a new and even more urgent context. Suddenly, in the spring of 1991, political alienation seemed to be overshadowed in the perceptions of the public by a new patriotism and national pride engendered by the Gulf successes. What had preoccupied the public during the elections of 1990 in the form of apathy, anger, or frustration with their governing bodies and politicians was overtaken by a patriotic pride in country. What had been antipathy toward the sloth, ignorance, and irresponsibility of youth became adulation of their performance in the war. Could these be the same youth who could not locate the United States on a map of the world?

As of this meeting today, it is undoubtedly too soon to develop adequate perspectives on the meaning of the Persian Gulf War for citizenship education in the U.S. It is an intriguing sequence of events whereby the election of November 6, 1990 was pasted up as an exercise in alienation of voters from government and their elected officials, only to be followed by the historic debates in Congress about declaring war. Quickly, Congress was revealed to be representing "us," not "them." The waves of patriotism evoked by the onset and conclusion of actual hostilities changed the atmosphere—at least for a time.

We cannot predict what the long range outcome of the Gulf War will be for America's sense of patriotism and sense of community. But there were clear and sharp divergences of opinion about the wisdom, justice, and morality of the war as expressed by politicians in the Congressional debates, by the opposing views of military and political experts in the press and television, by the differing views of responsible religious leaders, and by academic professionals on university campuses. The intensity of the national debate may actually serve to reinforce the view that the essence of patriotism in the long run is a well-developed sense of civic virtue bulwarked by substantive knowledge and participatory skills of citizenship devoted to the Constitution and the Bill of Rights.

The military victory in the Persian Gulf War revealed at least three immediate lessons of import for the public and for educators:

- Government can do something right.
- A problem can be solved by "throwing money at it."
- American citizens can achieve a powerful sense of community when the cause is perceived to promote the values of the public good, freedom, and justice. The question before us now is: **How can American education sustain the values of the Bill of Rights as the core of our common compact and promote a viable peace at home and abroad as we approach the world of 2000? Can we heed the injunction of William James in "The Moral Equivalent of War" and find the means henceforward "to inflame the civic temper as past history has inflamed the military temper"?**

Friday Session Summary

10th Annual Jennings Randolph Forum

Sustaining Our Common Compact: What Next?

This panel discussion answered the earlier challenge from R. Freeman Butts to address getting citizenship education into education reform efforts and into various levels of education. **Kathleen Kirby, Frank Dirks, Ivan Gluckman, Meryl Greenfield,** and **Connie Odems,** comprised the distinguished panel who responded. **Chuck Tampio** served as moderator.

Kathleen: R. Freeman Butts noted how good Math and Science have been at getting things on the agenda. Why are they good? Civic education could do an even better job, because Social Studies curriculums generally don't provide "hands on" experiences in civic participation. Our lab should be the community—community services provides a lab experience. The strength of Math and Science is students' ability to look back on personal experiences. Constitutional Rights Foundation's New Citizen Program, during the Bicentennial Celebration of the Bill of Rights, has emphasized civic responsibility through community service programs. These programs help immigrants deal with the frustration of living with diversity—community service civic participation provides dignity to new citizens. The notion of human dignity brought forth in the Bill of Rights can be instilled through community service and transferred to our students, who should provide service rather than simply accept service from government. Community service programs also teach personal and social responsibility, as well as provide time for reflection. Young people need the opportunity to reflect upon social issues and to learn that even a small contribution is important.

Frank: Bring young people into programs. Volunteerism among teenagers is increasing. An Independent Sector Report on volunteerism among teenagers demonstrated that schools influence teen volunteerism and the value of service. Volunteerism teaches students skills in getting along with others, relating to others, and coping with cultural diversity. Teens express more appreciation for a variety of institutions—community, governmental, political.

Ivan: The National Education Goals show what those in power think education should be doing. They are an oversimplification of educational objectives composed by business leaders whose concern is performance at optimum level to produce their products—an attitude reflect-

Meryl, Connie, and Ivan respond to audience questions.

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ing the Japanese influence. This is an unfortunate development we must deal with. The Goals deal with teaching certain content. Every group descends on the schools asking the teaching of certain skills because children aren't getting the education anywhere else. It is difficult for education administrators to do all things—the Middle School environment is of great concern to them. It is difficult to include citizenship education because of these demands. In teaching citizenship skills, community values, secular values in our country's history, and the responsibilities as well as rights of citizens should all receive attention. The concepts of duty and restraint are absent in the Bill of Rights. Down play individual rights in favor of teaching responsibility—a concept found in the French Declaration and the Canadian Charter of Rights and Responsibilities. School administrators would prefer to see more emphasis on RESPONSIBILITY—there is already a great awareness of rights in our society. We are entering a difficult era. The assertion of some rights seem to create a paradox in a culturally diverse society. Individual rights come into conflict with government as well as the individual rights of groups. NASSP is a strong supporter of citizenship education.

Meryl: Civility can only be learned in associational networks. CORO is involved in the health of the community through leadership training. It is difficult to teach citizenship in communities with children who have no sense of structure of the world, come from dysfunctional families, and don't attend school. **How do we communicate the concept of the Bill of Rights, its relationship to the community, and the individual's place in the community as well as rights and responsibility in the community? How do we build a sense of community?** Schools have an enormous role in teaching these concepts. Children not in school are the greatest challenge in teaching citizenship . Their problems cause most of the unrest in the community. **How do we deal with race relations—approach the Common Compact as 1) tribespeople (Guinness), 2) idiots concerned with ourselves, or 3) informed citizens who understand the knowledge and skills underlying the Common Compact?** The consensus seems to indicate we are a community of idiots and tribespeople. I hope we have the power to make citizens understand the requirements of our Common Compact.

Connie: President Bush asserts we are in the midst of an education revolution. I believe "revolution" means "change." It must take place at the following levels to build better informed citizens through citizenship education:

1. Teacher education reform. We live in a diverse society with conflicting values, and social and economic policies. I'm not sure people working in the "vineyards"—teachers—see the big picture. They learn disciplines but not how to deal with people. We need to empower people to be better human beings rather than to merely learn skills.

2. Structure of the school system. We need to help students to LIVE democratically. Educators in power give out double messages. They teach distrust of the system and should examine their own behavior.

3. Build better communities. Our association is concerned with this issue. The greatest challenge to us has been how to use colleges to build better communities. I worry about the 21st century. We haven't taken the time to consider the implications of the "have-nots'" exclusion from the community process. Several generations of Americans may not appreciate what we do because they have not been taught this appreciation. Adult education must see that this does not happen. It is up to educators to empower individuals to lead productive lives and care about all citizens.

Audience comments—

Chuck: I see the National Education Goals as counter-revolutionary, because they are against what most of us believe in as educators. Citizens are defined in the Goals as workers, those who participate in the work force. Thus, education is for competitiveness and productivity, obedience and subservience to society. The Goals fail to deal with dropout prevention, the course of which is set by the sixth grade. **Where is the program in place to reach potential dropouts who are currently in the third grade?**

Audience: What can be done with dropouts to make sure they are able to function in society?

Frank: Job training and job corps. As long as students see school as work, they only endure. Educational institutions must change. Youth must have contact outside the school with

churches and community.

Audience: High school students can serve as mentors for elementary school students.

Kathleen: We have a history of helping each other. We all do intuitively. Every child should have an adult who cares.

Meryl: We need systemic change. The role of the school in the community needs to be redefined perhaps to be a conveyor of social services.

Butts: Not only do we need to teach civic participation skills, but we need lifestyle changes as well. Community service and volunteerism are civic responsibilities. KIDS aren't connecting political participation, volunteerism, and civic participation. Educators aren't helping them to make this connection. *CIVITAS* must be available at and disseminated to all levels.

Ivan: Education associations are cautious about attacking the National Goals. Some of the country feels the thrust should come from the state and local levels. Some educators are reluctant to criticize and discourage inclusion of educators.

Chuck: What is the relationship of citizenship education to the international education process?

Andy Smith: Civic education is not just an American problem. Citizenship needs to be taught in the context of world changes because of mass immigration and mobility of the population.

Nancy Warzer: How does citizenship education relate to the adult literacy problem we have?

Connie: We seem to have improved adult literacy somewhat. But civic literacy is very different. People who aren't literate can't understand the basic documents fundamental to citizenship.

Ivan: Citizenship education needs to reach police and law enforcement agencies. These groups need to understand rights and responsibilities.

Discussion Questions

1. In what ways does *America 2000* fail to address citizenship education?

2. How do school choice issues reinforce or contradict First Principles?

3. How can local educators influence national education policy to more specifically include citizenship education skills?

4. How can volunteerism and community service teach First Principles?

5. How can we teach rights and responsibilities of citizenship to culturally diverse groups with conflicting interests?

6. How do the National Education Goals stress competition and worker productivity?

7. How can citizenship education positively impact the school drop-out rate?

Lasting Values: A Catalyst for Global Change

The following is an edited version of the luncheon speech by **Rita Klimova**, and comments by **Reactors Julia Klimova and Andy Smith.**

Thank you very much for asking me to speak here. Usually when I'm asked to speak , it's about investment opportunities in Czechoslovakia and the course of the economic reform, so I'm glad to be able to address another subject which I think is just as important. I have been asked to speak about the Bill of Rights, about lasting values as a catalyst for a change.

I think the experience of Czechoslovakia is a very good illustration of how true the title of this event is—how lasting values are becoming a catalyst for change, and the result. I'm sure most of you followed the events of the end of 1989 when in several months, the whole political geography of Eastern Europe and Central Europe changed. In Czechoslovakia, at least, these changes were very swift and very peaceful. There were hundreds of thousands of people in the streets, but not one window was broken. Nobody was hurt, let alone killed. Not one car was overturned. It went very, very swiftly and very smoothly, thereby earning the name of "The Velvet Revolution."

What was different about "The Velvet Revolution"? In Poland, the process had been going on much longer, let's say for 10 years at least. In Hungary, ten months. And in Czechoslovakia, ten days. Now why was that? Why did it go so well and what happened? I think that when we look for the reason why it happened at the end of 1989 and the manner in which it happened, reason number one must be attributed to Mr. Gorbachev. Whatever his political future may be and whatever the criticism he how experiences, I think his place in history is assured. In 1989 he was intelligent enough to realize that the costs of maintaining an empire in Eastern Europe by the Soviet Union were exceeding the benefits. He wisely made a decision not to bring out the tanks this time and to let events take a natural course.

In Czechoslovakia the trigger of events really was, I think, the moment we saw on our television screens a very, very brief 30-second shot of the Berlin Wall physically coming down and of people dancing up on top of the wall. I'm sure your televisions provided more than 30 seconds, but even those 30 seconds were enough to persuade most Czechoslovaks that if the Soviet Union was not sending its tanks that it was very unlikely or practically out of the question for Soviet tanks to come into our towns and cities and that it was safe to demonstrate. Also, the fact that the tanks were not coming out became clear to our political leadership which lost its nerve very quickly because they themselves knew the expense to which they had been reimposed on Czechoslovak society in the invasion of 1968, when during 48 hours the whole country was overrun by half-a-million soldiers of the Warsaw Pact countries led by the Soviet Union.

So, since then, we have undergone a very profound transformation. The main slogan of this transformation is a "return to Europe" and a reintroduction of a market system and a parliamentary democracy. We have had a free election already in June of 1990. So, this change is now taking place. In Czechoslovakia, one of the reasons that the events of 1989 were so smooth and the second reason why the events took place at all is the fact that previously, the United States and western European governments, together with the Soviet Union and our governments in the region, had concluded the Helsinki Accords. I don't think enough attention is being paid to that and not enough credit is given to the Helsinki process. At the time there were many critics of the Helsinki process.

In 1977, all the governments in Europe, with the exception of Albania, the United States and Canada, signed the Helsinki Accords as a sort of exchange. Everybody got something out of it. The United States and the West wanted to conclude the agreement because they wanted human rights to become a legitimate problem about which an international treaty had been concluded to bind the Soviet Union and East Bloc countries to a commitment to human rights, at least on paper, as an international agreement. The Soviet Union also had something going for it in the Helsinki agreement—the certification of all borders as they existed in the post-war period. That had never been undertaken—the borders between the Soviet Union and Poland, and between us and the Soviet Union, between Poland and Germany,

Rita Klimova addresses participants at the closing luncheon.

etc. Many groups and some governments questioned these borders. In Helsinki all the participants agreed to honor the post-war borders and the existing map of Europe. And each side thought that it was getting more than it was giving. The Soviets thought that they were, and our government thought that human rights was something that could be sort of glossed over, that there would be nobody to keep them to their signature on the Helsinki Accord and that they were getting more than they were giving.

History has proven that the United States' bargaining position was the correct one, because the commitment to the Helsinki process began a process of resistance to the Communists. In Czechoslovakia, in 1977 a group of about 230 people, got together and presented the government with a meekly worded petition. There was barely mention of human rights. And what the petition said was because our government had signed the Helsinki Accord which was now the law of the land, and published in our newspapers for everyone to read, it defined very clearly certain human rights which have to be honored, the government was bound to honor those rights—freedom of assembly, freedom of speech, freedom to travel. The government overreacted, and organized a big campaign against these people. Many, many people were arrested and others suffered house searches and various forms of harassment in such small things which are not dramatic, but unpleasant. I had to take the driving license test about five times, and I was called in. The police came in full uniform at 5 o'clock in the morning to take me with them and by noon I was home again.

This sort of psychological harassment led certain people to join the petition. Until 1989, the Charter 77 movement had only about 1100 people throughout the country. So it was a very small group, but one which continually pointed out that human rights were not being maintained in spite of the commitment at Helsinki. Later, Charter 77 was also involved with a lot of publications called "samizdat" or self-publication. The first publications we put out were 12 carbon copies on a typewriter, which isn't very much, although some fine novels were produced that way; but not many people get to read that. Gradually when things began to ease up in the Soviet Union and when it became clear that the Czechoslovak govern-

ment could not afford a big trial centered on literature, on questions of ideas, then we began smuggling in copy machines, and we began printings that were much larger. The start of all this was the Helsinki process and the human rights commitment at Helsinki.

Charter 77 was very important because there was somebody to negotiate with the Communists and to negotiate this very smooth transition when things began to change in 1989. I think one of the differences between Czechoslovakia and Romania is that they are very different cultures and very different political cultures. One the manifestations of this difference was that there was no dissident movement in Romania, whereas in Czechoslovakia there was. And there the transition was very bloody, and it's still not clear whether the transition has been a transition at all. In Czechoslovakia things went much better, and we had a group of people like President Havel of Charter 77 who were able to negotiate with the Communists and were able to start the new government.

I should point out that we don't have a presidential system like you do. Our president is elected by Parliament, and it was the old Parliament which essentially, except for about 30 people, was changed when the old deputies resigned and new deputies were co-opted. This Parliament elected President Havel on December 29, 1989 immediately, but he was really there for an interim period because that Parliament was a rubber-stamp Parliament. In June of 1990, a nationwide Parliamentary election was held, and the new Parliament unanimously elected Vaclav Havel as President.

So that was the period of euphoria when changes were wonderful and everybody was very happy. Now we are in the middle of 1991 and things are proving to be very difficult, especially in the context of human rights. I think what our case has shown very clearly is that elections and the legislative process are not enough to create a functioning democracy. They are only the first prerequisite. But then the real problems started because legislating something is fairly easy. We have a lot of models around the world—the American Bill of Rights is a case in point. In January of 1991 our Parliament legislated a Constitutional law which is called a Bill of Rights. It is a law on human rights. I have it here with me, and it was drawn up with the assistance of some American lawyers, because they knew about how the Bill of Rights functions and what it includes. There was a lengthy debate in Parliament about this Bill of Rights. Finally after a lengthy debate and about 60 amendments which came from the floor, the new Bill of Rights was legislated and is considered at the moment to be one of the best Bill of Rights around because it is the most modern one.

There is some debate about this Bill of Rights. Ours contains a lot of specific clauses, and one whole section of it speaks about rights which, in my opinion, should not be in a Bill of Rights and which cannot be guaranteed. You shouldn't put things into a Bill of Rights which you cannot provide for. It includes such things as the right to a clean environment. Now that's a beautiful right, but who's going to clean up the environment and at whose cost it doesn't say, of course. Then there was a lengthy debate about the right to work. That was one of the most important rights in the old Constitution under the Communist system—the right to work. Now that is dubious because the right to work can only be assured in a system like ours was , which was founded on the command economy, and wholesale nationalization where everything belonged to the government, and the government issued instructions to each and every plant and firm about what to produce, at what price, what wages to pay, who to sell to, and how much to deliver. All this was not decided by owners of property, but by a central agency of the government. And only under such conditions was it possible to create a system where no one was unemployed—you couldn't be unemployed in Czechoslovakia. If you were unemployed for six weeks, the police would usually invite you for an interrogation and ask you if you weren't a parasite, and where was your livelihood coming from. So this right to work under all circumstances was against the right to own property and many other rights—against the right to live in a prosperous country. This right to work I think should not be in a Bill of Rights because if we're going to have a functioning economy, we have to have labor mobility, and if we're going to have labor mobility, we're going to have some degree of unemployment—we are committed to that. Although our Bill of Rights will be only a few months old, already there are discrepancies. That is my personal opin-

ion of this Bill of Rights which I say is a fine one except for these very specific rights which nobody can assure.

Another problem we are having now is freedom of speech. That seems like an easy right to assure. It is not difficult like the right to work. But the right to free speech only seems to be easy to implement. There are two aspects of freedom of speech which are very difficult to deal with—people will have to learn to overcome these difficulties over the course of many years. At least that's our experience now. The first is the economics of free speech. You can say whatever you please at home to your family—you could do that under the Communists, but to write it somewhere and to present it to other people, you have to have a medium—a newspaper, a magazine, and radio station, a television station, a soapbox—at least a place where you speak to other people. Especially in the economics of print media, we are having a lot of problems. Many, many new newspapers and magazines appeared when it was possible to do that because before, we had very stringent and strict censorship. Now anybody can write anything they please if they have the money to buy newsprint, whose price has skyrocketed, and if they have the money to pay to print it.

There has now been a huge debate about whether print media should be taxed. The government, which is only starting the economic reform, feels that exemptions to taxation will just spread and other companies will make similar demands. So the request to make print media tax-free was rejected. At one point an unhappy spokesman for the government said, "Well, maybe some print media will be subsidized." Well, of course, this was the most foolish thing he could have said because it meant that the government will subsidize the print media which most suits their purpose. This is of course absolutely against the freedom of speech. So that is something we have not dealt with.

On the other hand, there has been such a mushrooming of various print media that a country the size of Czechoslovakia just cannot afford it. We cannot have thousands of dailies in the capital city and dozens and dozens of weeklies. So far many journalists don't like the idea of advertisements. There have been some offers to invest foreign capital from foreign media like *Financial Times*, and *Maxwell Group*, which have frequently been rejected. A political party or individual has to own it—somebody has to pay for it, because if newspapers were sold at cost, no one would buy them. It would be extremely expensive to buy a newspaper. So now all periodicals, with the exception of one or two, are going bankrupt. They have received some loans to carry them over a short period but obviously it will have to be the market, the reader, who will decide which ones will survive. But this whole concept of an independent press is linked to economics—it's a difficult issue.

Another thing is we still do not have are libel laws—anybody can write whatever they please. And, of course, that has produced a lot of what I think you call in the United States, "the yellow press," where people start a newspaper or a magazine and write the most outrageous things, without any foundation in the truth. This is a very complicated area where the problem of free speech is a problem even for countries who have been doing it for 200 years like the United States. I went to the Supreme Court to listen to a First Amendment case. A *New Yorker* writer inaccurately attributed quotation marks to a statement. And it was extremely complex and the litigation will go on for a long time—to decide what is correct and what is not correct is really not easy.

Our libel laws now state you have to prove malice or bad intention, and then the person who is sentenced goes to prison. He doesn't give you ten million dollars if he libels you as he would in the United States. Previous libel statutes were only on the books—but now this issue has to be dealt with.

Another large area of difficulties we are having is with the establishment of property rights. Property rights are an important part of the rights of citizens, and we are having a great many problems with establishing property rights on a just basis. Our national economy was government owned and government run, and now we are trying to find private owners—few Czechoslovakians have the money. Those who do have the money to buy stocks or small businesses are members of the former Communist governing classes who had large salaries and who stole a lot of things. And it is these people who now have the money to bid for newly privatized firms.

So it is a very difficult process—by no means do we see the light at the end of the tunnel. We are just beginning to. It will be an extremely difficult process. I would like to say that the difficulties we are having with the implementation of democracy and human rights in all its forms are so extensive that it really leads one to ask why we have these problems? Essentially, we cancelled and abolished these human rights in the first place. And I think that the developments which are occurring in Eastern Europe should be or can be looked upon as the greatest experiment in human engineering since the October Revolution in the Soviet Union in 1917—really an experiment on a very grand scale with millions of guinea pigs in it. And that this experiment has been clearly an experiment in changing some of the institutions of civilization, like the market or human rights, which have been arrived at by countries during the last two to three hundred years. It is risky to change or tamper with these fundamental rights—they should never be tampered with—because changing back is very difficult.

Julia Klimova, Reactor to previous speech.

This is the place for me to say that I think the American Bill of Rights and the American Constitution taught a lot of Soviet people. Maybe they didn't know a lot about the American Constitution, but they had the opportunity to see the lives lived by this Constitution.

In speaking about the effects of visiting America by Soviet citizens following Glasnost: Our mistake was, and maybe it was the mistake of some people in the United States too, to think that these changes can be immediate.

In speaking about the apparent stall of reform and the rise of social problems in the Soviet Union: I'm optimistic because I'm working with the children. The Soviet Communist Party likes to say that children are our future. So I'm working with our future.

Andy Smith, Reactor to previous speech.

I have learned much from my experiences in Eastern and Central Europe which have made me reflect in new ways on the Bill of Rights and our First Principles. The emerging democracies can teach us the revolutionary aspect of this document, which has been cast with the baggage of bureaucracies and lost much of its revolutionary strength and passion. Educators must revisit the revolutionary perspective of the Bill of Rights and First Principles. We need some optimism, which is an important aspect of education. We can feel optimistic about the enduring value of the Bill of Rights, which reaffirms a faith and trust in people, institutions, and even bureaucracy. If we don't have it, we should be here as educators. Education takes 30 years; we don't see results immediately.

Discussion Questions

1. How did the U.S. Bill of Rights influence the democratization movement in Czechoslovakia?

2. How does the Czechoslovakian Bill of Rights differ from the U.S. Bill of Rights?

3. What problems now face the new Czech and Slovak Federal Republic as a result of democratic reforms?

1991 Forum Speakers

★ **Herbert Atherton** is Staff Director and Director of Education for the Commission on the Bicentennial of the U.S. Constitution. Dr. Atherton is author of numerous books and articles on the Constitution and history. Dr. Atherton has held numerous college adminstrator and dean positions.

★ **Frederick H. Brigham, Jr.** is Executive Assistant to the President for the **National Catholic Education Association.** During the past twenty-five years, Mr. Brigham has proven accomplishments in community organizations and development, college teaching and administration, publishing, intergovernmental affairs, research, program evaluation, and telecommunication systems applications.

★ **John H. Buchanan, Jr.** served the 6th district of Alabama for eight terms as its Republican Congressman. He is President and Executive Director, **Council for the Advancement of Citizenship**; Senior Associate, **Kettering Foundation**; Chairman, Public Policy, **People for the American Way**, and a member of the *CIVITAS* National Review Council.

★ **R. Freeman Butts**, Honorary Chairman of the Jennings Randolph Forum, and CAC Board Member, is William F. Russell Professor Emeritus, Teachers College, Columbia University, and a member of the *CIVITAS* Framework Development Committee. Among his many contributions to civic education literature are his most recent contributions to the *CIVITAS* curriculum framework in the "Civic Virtue" section and "A Prefatory Note" to the overall *CIVITAS* document.

★ **Robert F. Chase**, CAC Board member and a former junior high school social studies teacher, is currently National Vice President of the **National Education Association.** Currently, he also serves on the Advisory Committee of the Future Educators of America, the National Council for the Accreditation of Teacher Education, and is a member of the *CIVITAS* National Review Council.

★ **Eric Chenoweth** is Project Coordinator, Education for Democracy/ International Project and Staff Assistant, **American Federation of Teachers.**

★ **Frank Dirks** is the Field Organizer for Youth Service America's Youth Volunteer Corps Replication Project. Mr. Dirks was formerly a Program Curriculum Planner for the **Close Up Foundation.**

★ **Julian Dyke**, Chair of CAC's Membership Committee and Natonal Director of Public Affairs for the **Boy Scouts of America**. Mr. Dyke has extensive experience in teaching and serves as an instructor for the Presidential Classroom for Young Americans.

★ **Dr. Thomas Eveslage** is a professor of journalism at Temple University, specializing in mass communications law and student press law. Dr. Eveslage is former president of the Board of Directors of the Student Press Law Center. He is author of *The First Amendment, Free Speech and a Free Press: A Curriculum Guide for High School Teachers.*

★ **Warlene Gary** is Manager of Education and Outreach for the **National Education Association**. As Acting Executive Director of the President's Advisory Committee for Women, Ms. Gary produced *Voices for Women*, the 1980 report of the Committee to the President. She has also served as a professional associate at the Council of Chief State School Officers.

★ **Ivan Gluckman** is Director of Legal Services and Government Relations for the **National Association of Secondary School Principals**. Mr. Gluckman has been an Adjunct Professor of school law at a number of colleges and universities in the Washington, D.C. area.

★ **Mark Goodman** is a lawyer and the Executive Director of the Student Press Law Center. Currently, he is also an adjunct member of the graduate faculty in the school of Mass Communication at Bowling Green State University, serves on the steering committee of the Libel Defense Resource Center and the Press Law Committee of the College Media Advisors. He has received numerous awards for his work with the student press and has published articles in the "Duke Law Journal," "College Law Digest," "Communications Lawyer," and "Communication: Journalism Education Today."

★ **Os Guinness** is formerly a guest scholar at the Woodrow Wilson Center for International Studies and Brookings Institution. From 1986–1989 he was

1991 Forum Speakers

the Executive Director of the **Williamsburg Charter Foundation**. Dr. Guiness is the author of four books examing society and culture.

★ **Kay Haffey** is Director of Educational Services for the *The Pottsville Republican*. She has organized teacher workshops on such topics as the Constitution, the Bill of Rights, geography, and Pennsylvania history. Ms. Haffey is a former secondary school English teacher.

★ **Charles C. Haynes**, serves as Project Director for the **Americans United Research Foundation**, President of the National Council on Religion and Public Education, and Executive Director of the **First Liberty Institute** George Mason University. Dr. Haynes is the author of various publications examining the role of religion in society.

★ **Helené Hodges** is Director of Research and Information for **The Association for Supervision and Curriculum Development**. Dr. Hodges has served as a classroom teacher, school director, program specialist/ evaluator, and national consultant.

★ **A.E. Dick Howard** is the White Burkett Miller Professor of Law and Public Affairs at the University of Virginia School of Law. He is the author of a number of books and articles concerning constitutional law. Professor Howard chairs the Virginia Commission on the Bicentennial of the United States Constitution and is a consultant to federal and state bodies, including the United States Senate Judiciary Committee.

★ **John J. Patrick** is the Director of the **Social Studies Development Center/ Indiana University** and the **Education Research Information Clearinghouse for Social Studies**, both at Indiana University. In addition, Dr. Patrick is a Professor of Social Studies Education at Indiana University and has written many publications concerning social studies, civics, the Constitution, and education, most recently *Resources for Teachers on the Bill of Rights*, co authored with Robert Leming.

★ **Andrew F. Smith** is President of the **American Forum for Global Education**, a national clearinghouse for global education located in New York City. Prior to this position, Mr. Smith served as the Director for the Center for Teaching International Relations at the University of Denver, Director of the California Council for Social Studies, Supervisor of Teacher Education at the University of California, Riverside, and worked as a high school administrator and teacher.

★ **Duane E. Smith** is the Associate Director of the **Center for Civic Education** and is the principal contributor to *We the People...* curriculum which has been widely used for elementary, middle and secondary school students during the initial year of the Bicentennial observations. Professor Smith is on the faculty of the Department of Political Science at UCLA.

★ **Frances M. Sonnenschein**, Director, National Education Department, **Anti-Defamation League of B'nai B'rith (ADL)**, is responsible for helping educators improve their human relations programs and policies. She supervises the production of materials, conducts workshops, speaks at conferences and develops special projects. Before joining **ADL**, she was a teacher of social studies and an Assistant Principal in the New York City School System.

★ **Stephen Sorenson** is Program Officer and Researcher for Educational Services for the Commission on the Bicentennial of the U.S Constitution. Mr. Sorenson also serves as the Director for the Bicentennial Commission Speakers Bureau.

★ **Charles M. Tampio** is Vice President, Programs, **Close Up Foundation**, and Chair, Jennings Randolph Forum Committee. Mr. Tampio also serves as host for Close Up's public affairs programs on CSPAN. Previously he was affiliated with the Department of Education of Rhode Island. He also served with the Peace Corps in Africa and subsequently directed an international university exchange between the University of Buffalo and the University of Parma, Italy.

★ **Mary Jane Turner** is currently Director of the Civic Achievment Award Program and interim Director of Curriculum and Instruction for the **Close Up Foundation**. Dr. Turner has been a social studies teacher at both the high school and university levels and has worked on many social studies curriculum projects and teacher training initiatives.

Wednesday, May 1, 1991

PRE-CONFERENCE ACTIVITIES

8:30–9:45 a.m. CAC Board Meeting

10:00 a.m.–12:00 p.m. CAC Membership Meeting

12:15–1:30 p.m. CAC Membership Luncheon

2:00–5:00 p.m. CAC Board Meeting

2:00–5:30 p.m. Forum Registration

5:30–7:00 p.m. Reception

7:00–9:00 p.m. OPENING DINNER

Presiding: Honorable John H. Buchanan, Jr.
President and Executive Director, CAC

Welcome and Opening Remarks
Charles M. Tampio, Chair,
Jennings Randolph Forum Committee

PRESENTATION OF CAC's 4TH ANNUAL PHILIP V. McGANCE AWARD FOR EXCEPTIONAL PUBLIC SERVICE *1991 Recipients:*

★ **Tom Dawson,** Administrative Assistant, Representative Neal Smith
★ **Shirley Sagawa,** Former Chief Counsel for Youth Policy, Senate Labor and Human Resources Committee

Introduction of Speaker: R. Freeman Butts,
Honorary Chair, **Jennings Randolph Forum**

KEYNOTE ADDRESS:
Return to First Principles: The Philosophical and Historical Roots of the Bill of Rights

A.E. Dick Howard, Speaker, White Burkett Miller Professor of Law and Public Affairs, University of Virginia School of Law

Thursday, May 2, 1991

9:00–10:00 a. m.

PLENARY SESSION: How Do We Deal With First Principles
Herbert M. Atherton, Speaker, Staff Director and Director of Education, Commission on the Bicentennial of the United States Constitution

10:30 a.m.–12:00 p.m.

SESSION 1: History and Philosophy of the Bill of Rights
Break-out Sessions:
★ **Freedom of Press**
Jean Otto, Facilitator, Associate Editor, *Rocky Mountain News*
Thomas Eveslage, Resource Person, Professor of Journalism, Temple University
Kay Haffey, Resource Person, Director of Educational Services, *The Pottsville Republican*
★ **Freedom of Speech**
Robert Chase, Facilitator, Vice President, National Education Association
Duane Smith, Resource Person, Associate Executive Director, Center for Civic Education
★ **Freedom of Religion**
Frederick Brigham, Facilitator, Executive Assistant to the President, National Catholic Education Association
Charles C. Haynes, Resource Person, Project Director, Americans United Research Foundation
★ **Freedom of Assembly/Petition**
Eric Chenoweth, Facilitator, Staff Assistant, International Affairs Department, American Federation of Teachers
John Patrick, Resource Person, Director, Social Studies Development Center, Indiana University

12:30 –1:45 p.m.

LUNCHEON
Introduction of Speaker: Charles C. Haynes, Americans United Research Foundation
Contemporary/ First Amendment Issues
Os Guinness, Speaker, Former Executive Director, Williamsburg Charter Foundation

2:00–3:30 p.m.

★ **SESSION 2: Contemporary Issues of the Bill of Rights**
Break-out Sessions
★ **Freedom of Press**
Jean Otto, Facilitator, Associate Editor, *Rocky Mountain News*
Mark Goodman, Resource Person, Director, Student Press Law Center
Jane Kirtley, Resource Person, Executive Director, Reporters Committee for the Freedom of the Press

Thursday, May 2, 1991

★ **Freedom of Speech**
Warlene Gary, Facilitator, Manager of Education and Outreach Programs, National Education Association
Duane Smith, Resource PersonAssociate Executive Director, Center for Civic Education
★ **Freedom of Religion**
Frederick Brigham, Facilitator, Executive Assistant to the President,National Catholic Education Association
Charles C. Haynes, Resource Perso, Project Director, Americans United Research Foundation
★ **Freedom of Assembly /Petition**
Eric Chenoweth, Facilitator, Staff Assistant, International Affairs Department,, American Federation of Teachers
John Patrick, Resource Person, Director, Social Studies Development Center, Indiana University

4:00–5:00 p.m.
SESSION 3: Reporting: Summary of Break-out Sessions on History, Philosophy, and Contemporary Issues of the Bill of Rights
Helené Hodges, Facilitator, Director, Research and Information, Associationfor Supervision and Curriculum Development
Speakers: Leaders of Sessions 1 and 2
Comment: The Audience

8:00–10:00 p.m.
EVENING PROGRAM:
★ **Tribute to Senator Jennings Randolph,**
Author of the XXVI Amendment and Founder of CAC
Presiding:
Michael Baly III, President and Chief Executive Officer, American Gas Assocation, CAC Vice President
★ **Introduction: Mark Sklarow,** Executive Director,Peace Child Foundation
Peace Child Foundation presents "City at Peace"
Performed by the National Capitol Area Chapter of Peace Child Foundation

Friday, May 3, 1991

8:30–9:00 a.m.
OPENING REMARKS:
Educating for our Common Compact
R. Freeman Butts, Honorary Chair, Jennings Randolph Forum

9:15–10:45 a.m.
SESSION 4: The Bill of Rights: Putting it into Practice
Break-out Sessions
★ **Elementary Schools**
Charles C. Haynes, Project Director, Americans United Research Foundation
Mary Jane Turner, Director, Civic Achievement Award Program, Close Up Foundation
★ **Middle and Secondary Schools**
Ed O'Brien, Co-Director, National Institute for Citizen Education in the Law
Duane Smith, Associate Executive Director, Center for Civic Education
Frances Sonnenschein, National EducationDirector, Anti-Defamation League of B'nai B'rith
★ **Community-based Groups**
Gwen Alfaley, Manager, International Programs, National 4-H Council
Julian Dyke, National Director of Public Affairs Boy Scouts of America
★ **Adults/ Higher Education**
Steve Sorensen, Program Officer, Education Services, Commission on the Bicentennial of the United States Constitution

11:00 a.m.–12:30 p.m.
SESSION 5: Sustaining Our Common Compact: What Next? Panel Discussion
Charles M. Tampio, Moderator, Vice President, Programs, Close Up Foundation
★ **Elementary Schools**
Frederick Brigham, Executive Assistant to the President, National Catholic Education Association
Ed Keller, Deputy Executive Director, National Association of Elementary School Principals
★ **Middle and Secondary Schools**
Meryl Greenfield, Director, Programs, Coro/Eastern Center
Ivan Gluckman, Director of Legal Services and Government Relations, National Association of Secondary School Principals
★ **Community-Based Groups**
Frank Dirks, Field Organizer, Youth Service America
Kathleen Kirby, Education Director, Constitutional Rights Foundation
★ **Adults/ Higher Education**
Connie Odems, Vice President, Professional Services, American Association of Community and Junior Colleges
Comment: The Audience

12:30–2:30 p.m.
CLOSING LUNCHEON
Lasting Values:A Catalyst for Global Change
Rita Klimova, Speaker, Ambassador of the Czech and Slovak Federal Republic
Reactor: Andrew Smith, President, The American Forum for Global Education
Reactor: Julia Klimova, Member, Moscow City Council
Moderator: Steve Schlesinger, Director of Education and Training Programs, United States Institute of Peace
Comment: The Audience

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The Council for the Advancement of Citizenship (CAC) is a nonprofit, nonpartisan consortium of organizations and individuals committed to promoting informed and responsible citizenship and citizenship education.

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About CAC

The Council for the Advancement of Citizenship is a nonprofit consortium of ninety national, regional, and local organizations established to preserve, enhance, and build upon the public's understanding of our Constitutional and political traditions and to promote civic participation. CAC accomplishes its mission by providing extensive citizenship education information clearinghouse services through its newsletter *Citizenship Education News*, *CIVITAS* and Education and Peace projects, the Annual Jennings Randolph Forum for the Advancement of Citizenship, publications and reports, collaborative activities with its members, and the administration of civic education programs and workshops. Membership is open to organizations, corporations, foundations, associations, institutions, and individuals subscribing to the purposes of the Council.

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